

## CHAPTER ONE

### **“TAKE JACK’S WORD”: THE PARDONS OF INTERNATIONAL FUGITIVES MARC RICH AND PINCUS GREEN**

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## CHAPTER ONE

### **“TAKE JACK’S WORD”: THE PARDONS OF INTERNATIONAL FUGITIVES MARC RICH AND PINCUS GREEN**

#### **FINDINGS OF THE COMMITTEE**

**Marc Rich and Pincus Green have a history of illegal and corrupt business dealings contrary to the security interests of the United States.**

- *Rich and Green have had extensive trade with terrorist states and other enemies of the United States.* Despite clear legal restrictions on such trade, Rich and Green have engaged in commodities trading with Iraq, Iran, Cuba, and other rogue states that have sponsored terrorist acts. By engaging in these activities, Marc Rich and Pincus Green demonstrated contempt for American laws, as well as the well-being of Americans who were harmed or threatened by these states.
- *The Central Intelligence Agency provided the following declassified information about Marc Rich to the Committee.*

If President Clinton had checked with the CIA, he would have learned that Marc Rich had been the subject of inquiries by various foreign government liaison services and domestic government agencies regarding their ongoing investigations of criminal activity.

In addition, President Clinton would have received information worthy of his consideration in making his decision on the pardon. This information cannot be declassified.

**Marc Rich and Pincus Green were guilty of serious crimes and showed contempt for the American justice system.**

- *Marc Rich and Pincus Green attempted to obstruct the criminal investigation of them in every way imaginable, including attempting to smuggle subpoenaed documents out of the country.* Rich and Green’s tactics resulted in a record-setting contempt fine against them, totaling \$21 million. Despite these tactics, the U.S. Attorney for the Southern District of New York was able to indict Marc Rich and Pincus Green on 51 counts of illegal activity, including tax evasion, mail fraud, wire fraud, and racketeering. The evidence against them was overwhelming.
- *Because of the strength of the case against them, Marc Rich and Pincus Green fled the country rather than face trial.* Rich’s own lawyer told him that by fleeing the country, Rich had “spit on the American flag” and that “whatever you get, you deserve.” For the 17 years

leading up to his pardon, Marc Rich was one of America's 10 most wanted international fugitives. Although Jack Quinn, Rich's attorney, argued that Rich did not flee the United States to avoid prosecution, Rich's ex-wife refuted this view, stating that Rich told her that "I'm having tax problems with the government . . . and I think that we are going to have to leave."

- *In order to avoid extradition or apprehension by United States law enforcement, Marc Rich and Pincus Green attempted to renounce their United States citizenship. While this attempt was rejected by the United States, it demonstrated that Rich and Green had no loyalty to the United States, and viewed their citizenship as a liability to be discarded at will.*

**Rich and Green's crimes were so serious that for seventeen years, the U.S. government devoted considerable resources to apprehending them and closing down their business activities.**

- *Rich and Green were such high-profile fugitives that on a number of occasions in the 1980s and 1990s, the United States Marshals Service attempted to arrest them in various foreign countries. A number of countries from the United Kingdom to Russia attempted to assist the United States in these efforts. The pardons of Rich and Green have sent a message that individuals can go from the FBI's most wanted list to a Presidential pardon if they spend money and have the proper connections. This message undermines U.S. efforts to apprehend fugitives abroad.*
- *Rich and Green were such high-profile fugitives that in 1991 the Government Reform Committee, under Democratic leadership, held a number of hearings and issued two reports about the government's efforts to apprehend Rich and Green. At that time, Democrats and Republicans in Congress took the Bush Administration to task for not being aggressive enough in hunting down Rich and Green, or shutting down their business interests in the U.S.*
- *While Rich and Green were fugitives from justice, the American government took a number of actions against their interests in the U.S. The federal government seized Rich's assets and shut down his trade in metals and grain with the government.*

**The United States government repeatedly tried to reach a plea agreement with Rich and Green.**

- For a number of years after Rich and Green fled the country, the U.S. government attempted to negotiate a plea bargain to settle the case. The government made a number of concessions in an attempt to reach a deal, but all offers were rebuffed by Rich and Green, who would not agree to any deal that resulted in jail time. While lobbying for a pardon, Jack Quinn and Rich's other lawyers claimed that the Justice Department had not even negotiated with Rich, and therefore, that a pardon was justified. Quinn and the other lawyers were misleading the White House when they made these claims.

**Jack Quinn misled the White House about the Rich case and attempted to mislead the Committee and the public regarding his work for Marc Rich.**

- *Marc Rich hired Jack Quinn after a recommendation from Eric Holder.* After numerous failed attempts to have his case settled, Marc Rich hired Jack Quinn to represent him. Quinn was hired after a recommendation from Deputy Attorney General Eric Holder. Gershon Kekst, who worked for Marc Rich on the pardon matter, asked Holder for a recommendation of how to settle a criminal matter with the Justice Department. Holder recommended that he hire a Washington lawyer “who knows the process, he comes to me, and we work it out.” Holder then explicitly recommended the hiring of Jack Quinn. While Holder did not know that Kekst was referring to Marc Rich, it suggests that Holder was favorably disposed to Jack Quinn, and would be very receptive to arguments made by Quinn, no matter how baseless they were.
- *Marc Rich was going to pay Jack Quinn for his work on the pardon.* After the Marc Rich pardon was granted, Jack Quinn claimed that he was not being paid by Rich for his work on the pardon, and that he expected no future payment for his work on the pardon. However, the Committee has uncovered evidence that Robert Fink, a lawyer close to Marc Rich, had discussions with Rich and Quinn about paying Quinn for his work on the Rich pardon. Documents which Quinn and Fink withheld from the Committee for over a year, and which were produced only after a federal judge ordered them produced to a grand jury, shed further light on the contemplated payment of Quinn. These documents indicate that Quinn raised the question of his “status” with Rich and asked that Rich pay him a \$50,000 per month retainer. The Committee attempted to interview Quinn about these documents, but Quinn refused to meet with Committee staff.
- *Jack Quinn may have been attempting to receive money from Marc Rich after the pardons were granted.* At the Committee’s February 8, 2001, hearing, Quinn pledged that “I will not bill [Rich], and I will not accept any further compensation for work done on the pardon.” This pledge surprised Rich’s lawyer, who expected that Rich would be paying Quinn for his work. Indeed, records just produced to the Committee indicate that Quinn may have been attempting to negotiate some payment from Marc Rich shortly after he pledged that he would not take additional money for his work. A March 5, 2001, e-mail from Quinn to Rich states “If you are agreeable, and I hope you are, I need to fax to you in the next few days a new retainer agreement.” This e-mail raises the possibility that Quinn has been attempting to obtain payments from Rich, in possible violation of his pledge to the Committee. The Committee attempted to interview Quinn about this matter, but he refused.
- *Jack Quinn’s work on the Rich pardon was in apparent violation of Executive Order 12834.* That executive order was enacted as part of President Clinton’s promise to create “the most ethical administration in history,” and it prohibited former executive branch employees from lobbying their former executive branch agencies within five years of their departure. Quinn has claimed that his work on the Rich pardon came within an exception for “communicating . . . with regard to a . . . criminal . . . law enforcement inquiry, investigation or proceeding[.]” However, this exception was clearly intended to apply to appearances before courts, not lobbying the White House for a pardon. The “revolving door” lobbying ban was intended to apply exactly to cases like this, where a former White House Counsel could come back and

lobby the President to take an action that had no constitutional limits on it, largely based on the President's personal trust for that former staffer.

- *The pardon petition compiled by Jack Quinn and the other Marc Rich lawyers was highly misleading.* Most of the arguments used by Jack Quinn to justify the Rich and Green pardons were false and misleading. These arguments could have been completely refuted if anyone in the White House had sought out any of the prosecutors familiar with the Rich case.
- *The "letters of support" in the pardon petition were used in a misleading manner.* Another key element of the Rich pardon petition was a number of letters of support for Rich and Green from prominent Americans and Israelis. Rich and Green used these letters to try to show that their humanitarian activities justified their pardons. However, many of these letters were obtained under false pretenses, and the writers of the letters were not told that they were being used to obtain a Presidential pardon. In addition, a number of individuals who wrote in support of Rich and Green received large amounts of money from them.

**Marc Rich and Pincus Green used a number of different individuals with close personal relationships with President Clinton and his staff to lobby regarding the pardon.**

- *The role of Denise Rich.* Denise Rich played a key role in obtaining the Rich and Green pardons. Denise Rich had a close relationship with President Clinton, which was based in part on her role as a large-scale contributor to Democratic causes and the Clinton library, and in part on her extensive personal contacts with President Clinton. Denise Rich used this relationship with President Clinton to lobby for the Marc Rich pardon on a number of occasions. Denise Rich has refused to cooperate with the Committee, invoking her Fifth Amendment rights rather than answer questions about her role in the pardon.
- *The role of Beth Dozoretz.* Beth Dozoretz, another close friend of President Clinton, played a key role in obtaining the Rich pardon. Like Denise Rich, Beth Dozoretz had a relationship with President Clinton built on personal ties and political fundraising. Dozoretz has raised and contributed millions of dollars for the Democratic party, and has pledged to raise an additional million dollars for the Clinton library. Beth Dozoretz also has close relationships with Denise Rich and Jack Quinn. Dozoretz used her close relationship with President Clinton to lobby for the Rich pardon. Because Dozoretz has invoked her Fifth Amendment rights against self-incrimination, the Committee is unable to conclude whether or not Dozoretz made any linkage between contributions to the DNC or the Clinton library and the granting of the Rich pardon.
- *The role of Prime Minister Ehud Barak.* Israeli Prime Minister Ehud Barak spoke to President Clinton three times about the Rich pardon. In his public statements about the Rich pardon, President Clinton has pointed to these conversations with Prime Minister Barak as one of the primary reasons he granted the pardon. However an examination of the transcripts of the calls shows that Barak did not make a particularly impassioned plea for Rich. Therefore, it appears that the President may be attempting to use Prime Minister Barak's interest in the Rich matter as a cover for his own motivations for granting the Rich pardon.

- *Barak had met with Rich personally and told Clinton that the Rich pardon “could be important . . . not just financially, but he helped Mossad on more than one case.” Barak’s statement raises the possibility that either Barak or Clinton acted on the Rich matter because of some promise of future financial return.*

**Eric Holder and Jack Quinn worked together to cut the Justice Department out of the decisionmaking process. Holder’s decision to support the pardon had a critical impact.**

- *Jack Quinn and Deputy Attorney General Eric Holder worked together to ensure that the Justice Department, especially the prosecutors of the Southern District of New York, did not have an opportunity to express an opinion on the Rich pardon before it was granted. The evidence amassed by the Committee indicates that Holder advised Quinn to file the Rich pardon petition with the White House and leave the Justice Department out of the process. One e-mail produced to the Committee suggests that Holder told Quinn to “go straight to wh,” and that the “timing is good.” The evidence also indicates that Holder failed to inform the prosecutors under him that the Rich pardon was under consideration, despite the fact that he was aware of the pardon effort for almost two months before it was granted.*
- *Eric Holder’s support of the Rich pardon played a critical role in the success of the pardon effort. Holder informed the White House that he was “neutral, leaning towards favorable” on the Rich pardon, even though he knew that Rich was a fugitive from justice, and that Justice Department prosecutors viewed Rich with such contempt that they would no longer meet with his lawyers. Holder has failed to offer any credible justification for his support of the Rich pardon, leading the Committee to believe that Holder had other motivations for his decision, which he has failed to share with the Committee.*
- *Eric Holder was seeking Jack Quinn’s support to be appointed as Attorney General in a potential Gore Administration, and this may have affected Holder’s judgment in the Rich matter. On several occasions, Holder sought out Quinn’s endorsement to be appointed as Attorney General if Al Gore were to win the November 2000 election. Quinn was a Gore confidant whose endorsement would carry great weight. Holder’s initial help to Quinn in the Rich matter predated the Supreme Court’s decision in *Bush v. Gore*, and accordingly, Holder had some legitimate prospect of being appointed Attorney General when he was helping Quinn keep the Rich matter from the Justice Department’s scrutiny. While Holder denies that his desire to be appointed Attorney General had anything to do with his actions in the Rich matter, it provides a much clearer and more believable motivation than any offered by Holder to date.*

**President Clinton made his decision knowing almost nothing about the Rich case, making a number of mistaken assumptions and reaching false conclusions.**

- *The White House never consulted with the prosecutors in the Southern District of New York regarding the Rich case. As a result, the White House staff was never able to refute the false and misleading arguments made in the Marc Rich pardon petition.*



- *Every White House staff member who was working on the Rich pardon opposed it. However, because they failed to do the necessary background research on the Rich case, they were unable to refute the arguments made by Jack Quinn.*
- *President Clinton was misled by Jack Quinn in their negotiations regarding the Rich pardon. Late in the evening of January 19, 2001, President Clinton and Jack Quinn had a telephone discussion regarding the Rich pardon. During this conversation, Quinn repeated his usual misleading arguments about the Rich case. Quinn also offered to make his clients subject to civil liability for their actions. In furtherance of this offer, Quinn agreed to waive all statute of limitations and other defenses, which Rich and Green would have as a result of their fugitivity. President Clinton has cited this waiver as a key factor in his decision to grant the pardons. However, if President Clinton or his staff had done even cursory legal research, they would have understood that this was a hollow, meaningless deal. First, Quinn agreed to waive defenses that Rich and Green did not have. It is basic legal doctrine that fugitivity tolls the statute of limitations. Second, Rich and Green likely do not face any civil liability for their crimes, since those fines were already paid by their companies. Third, Rich and Green had been willing to pay \$100 million to settle their case for years. A fine, even a large one, would have had no impact on Rich and Green, and it would merely stand for the proposition that the U.S. justice system is for sale.*
- *When the White House did finally provide the names of Marc Rich and Pincus Green for a Justice Department background check in the middle of the night on January 19, 2001, the check turned up new, troubling information which was disregarded by President Clinton. When the White House requested the Justice Department to perform a computer background check on Rich and Green prior to granting the pardons, the check came back with information that they were wanted for “arms trading.” This was new information for all of the White House staff, and it raised serious questions among them as to whether the pardons should be granted. However, the only step the White House took to check on this allegation was to call Jack Quinn. Quinn predictably denied that his clients were involved in arms trading. Faced with this conflicting information about Rich and Green, President Clinton instructed his staff to “take Jack’s word,” and issue the pardons.*

**President Clinton has failed to offer a full accounting for his decision to issue the Marc Rich and Pincus Green pardons.**

- *President Clinton has failed to answer any questions about the Rich and Green pardons. The few statements that he has issued have been misleading, incomplete, and raised more questions than they answered. Given his complete failure to explain the pardons, the Committee is left with serious unanswered questions regarding President Clinton’s motives.*

## **INTRODUCTION**

The pardons of Marc Rich and Pincus Green were the most controversial and most outrageous pardons issued by President Clinton, and likely, by any President. Rich and Green were fugitives from justice, and were two of the largest tax cheats in U.S. history. In addition, they had a long and disgraceful record of trading with America’s enemies, helping prop up the

Ayatollah Khomeini, Saddam Hussein, Muammar Qaddafi, and the Russian mafia, among others. This track record has led even Marc Rich's lawyers to call him a "traitor" and observe that he has "spit on the American flag."

It is beyond any dispute that Marc Rich and Pincus Green did not deserve pardons. Therefore, the inevitable question is why the President granted them. Some believe that the Rich and Green pardons were the product of a pardon process that completely broke down at the end of the Clinton Administration. These individuals would argue that in his rush to create a legacy at the end of his term, President Clinton short-circuited the normal clemency review process, and granted pardons without conducting the due diligence that was required. While this is hardly a charitable view of President Clinton, it is the most innocuous explanation that can be presented for the Rich and Green pardons.

There are a number of reasons to believe that the pardons were not just the product of a sloppy process. After all, even though they did not fully understand the scope of Rich and Green's crimes, the President and White House staff grasped the essentials of the Rich case: Rich and Green were massive tax cheats, fugitives from justice, and had traded with the enemy. Yet, they received the pardons despite these damning facts. Therefore, the Committee has looked at the motives of the key players in the Marc Rich and Pincus Green pardon effort.

The evidence raises many questions regarding the motives of the key players.

- Jack Quinn, for example, used his influence as a former White House Counsel to lobby the President on Rich's behalf. Quinn repeatedly provided misinformation to the White House. At the height of the public's outcry about the Rich case, Quinn claimed that he was representing Rich on a pro bono basis. However, the evidence obtained by the Committee shows that Quinn was attempting to secure a lucrative payment from Rich, and may still be trying to obtain payment from Rich.
- Deputy Attorney General Eric Holder provided critical support for the Rich pardon. While Holder should have ensured that the Justice Department's views were represented in the pardon process, Holder instead advised Jack Quinn on how to cut the Justice Department out of the process. While all of the White House staff was opposing the Rich and Green pardons, Eric Holder provided critical support for it at the eleventh hour. Holder may claim that his actions were the result of misjudgment, but Holder himself admitted that he was seeking Quinn's support to be nominated as Attorney General if Al Gore was elected President. This created a conflict of interest for Holder.
- Denise Rich and Beth Dozoretz were both close friends of President Clinton and major contributors to the Democratic Party. In addition, Denise Rich contributed \$450,000 to the Clinton Library, and Dozoretz pledged to raise \$1 million for the Clinton Library. Both lobbied the President on the Rich pardon. Both have also invoked their Fifth Amendment rights rather than testify about their discussions with the President.
- President Clinton is ultimately responsible for the pardons, and must ultimately provide an explanation of why he granted them. He has, however, failed to provide any satisfactory

rationale for his actions. He has failed to answer any serious questions, and instead, has offered only one self-serving, factually inaccurate newspaper column to justify the pardons. President Clinton's attempted explanations have raised more questions than answers about his motivations for granting two of the most unjustified pardons in U.S. history.

Regardless of the motivations for the Rich and Green pardons, the nation must live with the consequences of them. The pardons have sent two equally destructive messages. First, by granting the pardons, President Clinton undermined the efforts of U.S. law enforcement to apprehend fugitives abroad. By pardoning a man who evaded capture by the U.S. Marshals Service for almost two decades, President Clinton sent the message that indeed, crime can pay, and that it may be worthwhile to remain a fugitive rather than face charges. The pardon also could undermine U.S. efforts to obtain extradition of fugitives from foreign countries. When a man like Rich can go from the Justice Department's most wanted to a free man with a stroke of the pen, it is difficult for the U.S. to credibly demand the extradition of wanted fugitives. Finally, the pardons send the message that President Clinton did believe that different rules applied to wealthy criminals. If he did not have the money to hire Jack Quinn and his White House access, Marc Rich never would have obtained a pardon. The President abused one of his most important powers, meant to free the unjustly convicted or provide forgiveness to those who have served their time and changed their lives. Instead, he offered it up to wealthy fugitives whose money had already enabled them to permanently escape American justice. Few other abuses could so thoroughly undermine public trust in government.

## **I. BACKGROUND OF MARC RICH AND PINCUS GREEN**

### **A. Rich and Green's Business Activities**

#### **1. How Rich and Green Became Wealthy**

Marc Rich is one of the wealthiest people in the world. His network of business enterprises is estimated to generate upwards of \$30 billion annually.<sup>1</sup> Rich's personal net worth is estimated at between \$1.5 and \$8 billion.<sup>2</sup> Along with his business partner Pincus "Pinky" Green, Rich has made this fortune principally through the commodities trading business.

Rich began his career as a commodities trader in 1954 with the New York office of the trading firm Philipp Brothers.<sup>3</sup> Rich traded in a wide variety of commodities, including precious metals. Throughout his early career he was highly successful, amassing huge profits for the firm. Over time, Rich also developed a niche within the firm as a crude oil trader. He and Green revolutionized international oil trading by creating the "spot market," which is the practice of purchasing oil from producers and immediately selling it to refineries for a large profit.

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<sup>1</sup> Josh Getlin, *Clinton Pardons a Billionaire Fugitive, and Questions Abound*, L.A. TIMES, Jan. 24, 2001, at A1.

<sup>2</sup> A. Craig Copetas, *Court TV Chat Transcript* (visited Mar. 10, 2002) [http://www.courtstv.com/talk/chat\\_transcripts/2001/0220rich-copetas.html](http://www.courtstv.com/talk/chat_transcripts/2001/0220rich-copetas.html). It should be noted that estimates of Rich's personal fortune are probably lower than the actual amount because of Rich's history of questionable accounting and tax evasion, including that for which he was indicted in 1983.

<sup>3</sup> A. CRAIG COPETAS, *METAL MEN: MARC RICH AND THE 10-BILLION-DOLLAR SCAM* 65 (1985).

After more than twenty years of trading for Philipp Brothers, Rich decided that he could make more money on his own. In 1975, while managing Philipp Brothers' Madrid office, Rich called a meeting of the firm's European managers in Zug, Switzerland, during which he demanded an impossibly high bonus.<sup>4</sup> When, as expected, Rich's boss refused, Rich announced that he was leaving the firm to start his own company. He left with Pincus Green, taking six other top traders from the firm, as well as files of information on Philipp Brothers' clients.<sup>5</sup> Rich's new firm was a success, and Rich was well on his way to becoming a billionaire. By 1982, Marc Rich + Co. A.G. had become the second largest commodities firm in the world.<sup>6</sup> However, as Rich's biographer explained, the initial financing for Rich's new company was based largely on "a promise from Iranian Senator Ali Rezai to help set up a series of no-holds-barred oil deals that would, in part, lead to making Marc Rich the most wanted white-collar fugitive in American history."<sup>7</sup>

## **2. Marc Rich's History of Illegal and Improper Business Dealings**

Even before he had departed Philipp Brothers, Marc Rich developed a reputation as a shrewd and unethical manipulator. As fellow Phillip Brothers' trader Bill Spier explained, "What separated our friendship was his belief that you could only make it bigger and better than the next guy by buying people off. Marc was suave and sophisticated and obsessed with power. He was always looking to see who he could buy off."<sup>8</sup> While at Philipp Brothers, Rich also learned to deal with rogue political regimes in order to make a profit. For example, in 1958, Rich was sent to Cuba, and continued to work there after the fall of the Batista regime. As one former associate explained, "Marc cut his teeth in Havana, and the experience shaped his character because it taught him that being illegal was okay under certain conditions[.]"<sup>9</sup>

Once he set up his own business enterprise, Rich's questionable practices appear to have expanded. His trading empire was based largely on systematic bribes and kickbacks to corrupt local officials. For example, in 1977, one of Rich's traders claimed to have deposited \$125,000 into the Swiss bank account of Reza Fallah, then-head of the Iranian National Oil Company, in exchange for "services rendered" in securing a shipment of Iranian oil to Spain.<sup>10</sup> In 1978, Rich and Green were caught diverting Nigerian oil shipments to South Africa. When the Nigerians threatened to cut off relations with Rich, he paid a \$1 million bribe to the Nigerian transport minister to get the contract back.<sup>11</sup> Rich also reportedly paid former Jamaican President Edward Seaga \$45,000 to send the Jamaican track and field team to the 1984 Olympics. In return, Rich signed a ten-year agreement to purchase most of the output of the Jamaican Alcoa plant, which annually produced a significant portion of the world's aluminum.<sup>12</sup> One former Rich trader

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<sup>4</sup> *Id.* at 96.

<sup>5</sup> *Id.* at 99.

<sup>6</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 98 (Feb. 8, 2001) (prepared testimony of Morris "Sandy" Weinberg, Jr., and Martin J. Auerbach, former Assistant U.S. Attorneys for the S.D.N.Y., Department of Justice).

<sup>7</sup> A. CRAIG COPETAS, *METAL MEN: MARC RICH AND THE 10-BILLION-DOLLAR SCAM* 99 (1985).

<sup>8</sup> *Id.* at 66.

<sup>9</sup> *Id.* at 71.

<sup>10</sup> *Id.* at 115.

<sup>11</sup> *Id.* at 119.

<sup>12</sup> Shawn Tully, *Why Marc Rich is Richer Than Ever*, *FORTUNE*, Aug. 1, 1988, at 74.

explained the standard practices of Rich's companies as follows: "[t]o go into places like Iran and do honest business is naive. I'd figure 15 percent of your net in payoffs for every deal made."<sup>13</sup>

As is explained in more detail below in the section discussing Rich's legal troubles in the United States, Rich also laundered funds and hid his profits to protect them from the taxing authorities of various countries. For example, Rich routinely used Panamanian shell companies (Sociedades Anónimas) to launder money and to conceal profits from taxing authorities.<sup>14</sup> As explained by author Craig Copetas:

Panamanian corporate law is particularly helpful to a trader whose operations extend outside the Central American nation and into several different countries. A Sociedad Anónima is never required to file financial reports or tax returns and may maintain its books in any manner it desires in any part of the world. This permits a procedure generally known as laundering, and for Marc Rich — an expert at sidestepping the politics of nations by acting as a maverick middleman between producers and consumers — it was quite the bargain at \$1,650 plus a \$50 annual franchise tax.<sup>15</sup>

Rescor Incorporated, (a company that Rich used in his illegal oil scam that led to his legal troubles in the United States) was one such shell company. At one point, according to a former Rich shareholder, Rich had \$800 million in cash concealed in his Panamanian shell companies.<sup>16</sup>

Working with corrupt governments was not Marc Rich's only trademark. Much of Rich's fortune was made dealing with countries that no one else would deal with. Rich shrewdly used his multinational status, and his familiarity with unscrupulous business practices, to profit from embargoes and wars by trading with pariah nations. Rich's pattern of dealing with America's enemies, especially Iran, led even one of Rich's own lawyers to admit that Rich could be considered a traitor to his country:

Rep. Waxman: Do you agree with the statement that these gentlemen [Rich and Green] were two traitors to their country?

Mr. Libby: I can understand someone using those terms.

Rep. Waxman: Do you agree with them?

Mr. Libby: Their companies engaged in trades with Iran —

Rep. Waxman: Traitors not traders.

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<sup>13</sup> A. CRAIG COPETAS, METAL MEN: MARC RICH AND THE 10-BILLION-DOLLAR SCAM 115 (1985).

<sup>14</sup> *Id.* at 125.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

Mr. Libby: No, sir, I was trying to finish — during a period when trades [sic] were held, and that was an act you could consider an act of a traitor.

Rep. Waxman: That someone could consider, but you do not consider it?

Mr. Libby: I could consider it. I do not condone it. I didn't advise it. I do not admire it.<sup>17</sup>

The following section describes specific business relationships that Rich maintained with regimes or countries with interests adverse to the United States. U.S. intelligence agencies have considerable information about Marc Rich, none of which was reviewed by the White House prior to the pardons. Unfortunately, most of the information remains classified. The CIA, however, did declassify the following statement:

If President Clinton had checked with the CIA, he would have learned that Marc Rich had been the subject of inquiries by various foreign government liaison services and domestic government agencies regarding their ongoing investigations of criminal activity.

In addition, President Clinton would have received information worthy of his consideration in making his decision on the pardon. This information cannot be declassified.

As described below, though, the public record alone should have been enough to eliminate any possibility of pardons for Marc Rich and Pincus Green.

#### **a. Iran**

Marc Rich got his start in the oil trade through business dealings with the Shah of Iran. After the Shah fell from power, many were concerned by Ayatollah Khomeini's violent rise to power. However, Rich saw a new opportunity, and began trading with the Khomeini regime. In the early days of the Iranian revolution, after the new Iranian government seized 51 American hostages, the United States imposed a strict trade embargo on Iran. Nevertheless, Rich directed his staff to meet the new directors of the Iranian state-owned oil company.<sup>18</sup> Shortly thereafter, Marc Rich and Pincus Green reached a deal to purchase Iranian oil through his Swiss company, Marc Rich + Co. A.G. Reportedly, Rich paid for much of this purchase in small arms, automatic rifles, and hand-held rockets.<sup>19</sup> One of Rich's colleagues stated that because of this deal "Rich got more excited than I had ever seen him."<sup>20</sup>

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<sup>17</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 486 (Mar. 1, 2001) (testimony of I. Lewis "Scooter" Libby).

<sup>18</sup> A. CRAIG COPETAS, *METAL MEN: MARC RICH AND THE 10-BILLION-DOLLAR SCAM* 131 (1985).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 132.

## **b. South Africa**

Rich's companies also dealt extensively with the South African government throughout the apartheid regime. Notwithstanding the United Nations' ban on oil sales to South Africa, throughout the 1980s Rich's company was one of the three main traders of oil between the Middle East and South Africa.<sup>21</sup> Where other companies saw legal peril, Marc Rich saw profit, with South African companies willing to pay a premium of \$8 per barrel of oil. According to the Dutch-based Shipping Research Bureau, Rich supplied about 6 percent of all oil imports to South Africa between 1979 and 1986, earning upwards of \$1 billion from the transactions.<sup>22</sup> And according to a former Rich shareholder, at the time of their indictment in the United States, Rich and Green were trading Soviet and Iranian oil to the apartheid government in South Africa in exchange for Namibian uranium, which Rich and Green in turn sold back to the Soviet Union.<sup>23</sup>

At times, Rich's deals with South Africa were so risky and profitable that Rich would scuttle the oil tanker at the conclusion of the deal and fly the crew home. In one deal, a tanker was loaded with oil from the Soviet Union, was diverted from its intended itinerary, covered its name with tarpaulins, communicated only in code, and then delivered its oil in secret to South Africa.<sup>24</sup>

## **c. The Soviet Union/Russia**

The South African uranium transactions were not the only dealing Rich had with the Soviet Union. In fact, Rich and his companies dealt extensively with the Soviet Union and other Communist countries. His oil trading with the Soviet Union provided Moscow with the hard currency needed to purchase grain during the United States' grain embargo.<sup>25</sup> Rich's dealings with the Soviet Union were so extensive and helpful to the Soviet Union that when he was indicted in the United States in 1983, one Moscow newspaper printed a front page, above-the-fold story defending Marc Rich and attacking the United States.<sup>26</sup> In fact, the Russian newspaper *Izvestia* wrote the following in defense of Rich:

The United States thinks that all countries, big and small, must subvert their national interests to American measures. . . . Under the pretext of nonpayment of taxes by the Swiss branch of the Marc Rich firm, American authorities have given an ultimatum: either Switzerland changes its internal legislation or its companies will be deprived of admission to American markets. This action by the Reagan Administration is an open threat, an attempt to interfere into the internal affairs of Western European countries through the threat of economic sanctions. The Americans are living under the illusion of a Pax Americana.<sup>27</sup>

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<sup>21</sup> Andrew Lycett, *Spectrum: Plain Sailing Through the Sanctions Net*, TIMES (London), Sept. 12, 1986.

<sup>22</sup> Shawn Tully, *Why Marc Rich is Richer Than Ever*, FORTUNE, Aug. 1, 1988, at 74.

<sup>23</sup> A. CRAIG COPETAS, METAL MEN: MARC RICH AND THE 10-BILLION-DOLLAR SCAM 198 (1985).

<sup>24</sup> Jim Hougan, *King of the World* (Marc Rich), PLAYBOY, Feb. 1, 1994, at 104.

<sup>25</sup> *Id.*

<sup>26</sup> A. CRAIG COPETAS, METAL MEN: MARC RICH AND THE 10-BILLION-DOLLAR SCAM 196–197 (1985).

<sup>27</sup> *Id.* at 197.

The fact that one of the leading propaganda organs of the Soviet state would dedicate itself to the defense of a capitalist commodities trader like Marc Rich shows the importance Rich and his company had in providing hard currency to the Soviet regime.

Marc Rich's influence has only grown in post-Communist Russia. Rich took advantage of widespread privatization in Russia to acquire large supplies of industrial materials at bargain prices. As explained in *The Washington Post*, "[a]fter the Soviet Union fell apart in 1991, these relationships helped Rich become for a time the single most important Western trader in Russia."<sup>28</sup> There is also evidence that Rich has developed deep ties with Russian organized crime, a powerful force in post-Communist Russia.<sup>29</sup> According to press accounts, law enforcement agencies including the FBI and the CIA had information indicating that Rich had financial ties to the Russian mafia.<sup>30</sup> According to one U.S. intelligence source who spoke to the press, "Clinton would have found out about the relationships if he had asked either the FBI or CIA, [but] [h]e clearly never bothered to ask."<sup>31</sup> Another source told the press that "[t]he FBI has tons of material on the Russian mafia and in particular the Rich-mafia connection."<sup>32</sup>

Reportedly, Rich has been linked specifically by U.S. law enforcement to Mikhail Chernoy, a former agent for Trans-World Metals. Chernoy is a defendant in a civil case in the U.S. District Court for the Southern District of New York. He is named as a controller of two Russian aluminum companies by European companies who claim that the defendants used bribery, money-laundering and extortion in order to illegally seize a large aluminum plant in Russia.<sup>33</sup> Moreover, according to an investigative report commissioned by the World Bank in 1998, Chernoy was arrested by the Swiss police in 1996 during an investigation of Russian gangs.<sup>34</sup> As the report states, Mikhail's brother Lev "is believed to be a major Russian mafia figure by most international police and intelligence organizations."<sup>35</sup> The report further states that Marc Rich provided the seed money necessary to start up Trans-World metals.<sup>36</sup>

Rich has also been linked to Grigori Loutchansky, a Georgian-born Israeli citizen who is considered to be a significant player in Russian mob activities. According to press accounts, Loutchansky worked with Rich in the early 1990s selling Russian oil and aluminum from formerly state-run enterprises.<sup>37</sup> Loutchansky, who was "accused of drug trafficking and

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<sup>28</sup> Michael Dobbs, *Rich Made His Fortune by Breaking the Rules*, WASH. POST, Mar. 13, 2001, at A1.

<sup>29</sup> ROBERT I. FRIEDMAN, RED MAFIYA: HOW THE RUSSIAN MOB HAS INVADDED AMERICA 51 (2000) (indicating that Rich had a relationship with Russian gangster Marat Balagula, now serving time in prison for gasoline price fixing). Rich is also suspected to have been involved in metals trading going in and out of the Estonian port of Tallinn, where Russian copper, nickel and cobalt are often exported. Tallinn is notorious for being controlled by the Russian mafia. Rich's company has denied using the port of Tallinn. See Tony Glover, *The EU's Baltic Extension*, EUROBUSINESS, May 1, 1994.

<sup>30</sup> Matthew McAllester, *Rich's Suspect Ties/Sources: Clinton Could have Learned Russian Mob Links*, NEWSDAY, Mar. 1, 2001, at A5.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* David Reuben, the Chairman of Trans-World has denied this account. See *Letters*, NEWSDAY, Mar. 7, 2001, at A39.

<sup>37</sup> *The U.S. Connection in Caucasus*, INTELLIGENCE NEWSLETTER, No. 401, Mar. 8, 2001.



smuggling nuclear weapons,”<sup>38</sup> is “listed in a 1995 State Department ‘watch list’ as a ‘suspected criminal,’”<sup>39</sup> and was involved in the 1996 campaign fundraising scandal. *Time* magazine has said that Loutchansky is “considered by many to be the most pernicious unindicted criminal in the world,”<sup>40</sup> yet he dined with Clinton at a White House dinner in 1993 and subsequently channeled money into Clinton’s campaign.<sup>41</sup> He was also invited to a fundraising dinner in July 1995 but was unable to attend when his visa was denied and invitation withdrawn.<sup>42</sup>

#### **d. Cuba**

In this hemisphere, Rich continued to conduct business with Communist Cuba, notwithstanding the U.S. embargo. Rich’s early dealings with Fidel Castro as a trader for Philipp Brothers apparently paid off decades later when he started his own companies. Marc Rich reportedly assisted Cuban efforts to escalate its nuclear power program in 1991.<sup>43</sup> Rich negotiated with Castro’s son to develop a uranium deposit in Western Cuba.<sup>44</sup> The highly enriched uranium could be used to fuel Cuba’s twin 440-megawatt nuclear power reactors. In addition, U.S. officials were concerned about the weapons potential of the enriched uranium used in the reactor.<sup>45</sup> Also in 1991, Marc Rich & Co., Ltd. arranged a \$3.9 million deal for sugar and oil that were transferred through Cuba.<sup>46</sup> Ultimately, these transactions violated the Cuban Assets Control regulations, and the Office of Foreign Assets Control of the U.S. Department of Treasury blocked nearly \$3 million of funds from Rich’s Cuba transactions.<sup>47</sup>

#### **e. Libya**

Marc Rich also apparently traded with Libya under Muammar Qaddafi.<sup>48</sup> Rich’s companies purchased oil from Libya beginning in the 1970s.<sup>49</sup> Yet even after the United States bombed Libya in April of 1986 in response to the terrorist attacks originating in that country, Rich reportedly continued to purchase crude oil from Qaddafi’s regime.<sup>50</sup> Rich continued to do business with Libya even after U.S. oil companies completely withdrew from the country.<sup>51</sup>

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<sup>38</sup> Judi Hasson, *Panel Offers Evidence of China Link Beijing Bank Wired Funds to L.A. Man Prior to Donation*, USA TODAY, July 11, 1997, at 6A.

<sup>39</sup> Jerry Seper, *Ukrainian Gained U.S. Entry Because of Spelling Mismatch*, WASH. TIMES, Dec. 13, 1997, at A4.

<sup>40</sup> *Statement by Former CIA Director on Clinton Ties to Loutchansky*, U.S. NEWSWIRE, Nov. 3, 1996.

<sup>41</sup> Jerry Seper, *Soloman Asks Again for Data on Meetings with Russian*, WASH. TIMES, Feb. 11, 1997, at A4.

<sup>42</sup> Lee Davidson, *Bennett Zeros in on Demo Donations*, DESERET NEWS (Salt Lake City, UT), July 11, 1997, at A1.

<sup>43</sup> John J. Fialka and Jose de Cordoba, *Cuba Speeds Nuclear Project; Marc Rich Is Said to Assist*, WALL ST. J. EUROPE, June 4, 1991, at 2.

<sup>44</sup> *Id.*

<sup>45</sup> *See id.*

<sup>46</sup> Department of Treasury Document Production 000635 (Note to file C-17306 from the Compliance Programs Division) (Exhibit 1).

<sup>47</sup> Department of Treasury Document Production 000652 (Memorandum from R. Richard Newcomb, Director of the Office of Foreign Assets Control, Department of the Treasury, to Ronald K. Noble, Under Secretary for Enforcement, Department of the Treasury (Sept. 16, 1994)) (Exhibit 2).

<sup>48</sup> A. CRAIG COPETAS, METAL MEN: MARC RICH AND THE 10-BILLION-DOLLAR SCAM 118 (1985).

<sup>49</sup> *Id.*

<sup>50</sup> *Strong Tanker Fixtures Seen as Indication of Undiminished Interest in Libyan Oil*, PLATT’S OILGRAM NEWS, July 16, 1986, at 1.

<sup>51</sup> *Id.*

Unlike the other American oil companies, Rich ignored the oil embargoes and executive orders of the Reagan Administration designed to punish the terrorist-sponsoring state.

#### **f. Iraq**

It has also been reported that Marc Rich attempted to violate the UN embargo against Iraq during the Persian Gulf War.<sup>52</sup> Other reports indicate that U.S. officials have been investigating charges that Rich lent money to Saddam Hussein's government in exchange for future deliveries of cheap oil.<sup>53</sup> In a statement to *The Financial Times of London*, Marc Rich acknowledged that he had communications with Iraq in September of 1991, but denied that it involved oil trading.<sup>54</sup> The fact that Rich would admit to having discussions with Saddam Hussein's government just months after the end of the Gulf War is remarkable. Based on his pattern of shrewd, unethical, and illegal business dealings with other rogue regimes, Rich's claim to be interested only in humanitarian aid for Iraq completely lacks credibility.

#### **g. Angola**

In Angola, as in many other countries, Marc Rich and Pincus Green became close to the dictators ruling the country. These relationships gave them exclusive rights to the country's oil. When other Western oil companies wanted Angolan oil, they had to turn to Marc Rich and Pincus Green. This point was made with somewhat comedic effect when, in the late 1970's, a number of western oil executives were called to a meeting with Angola's oil agents. Expecting a group of communist officials, the executives "were visibly stunned when the communist representative who walked into the conference room turned out to be Pinky Green, greeting Exxon executives with a hearty 'How ya doin'?'"<sup>55</sup>

#### **h. Romania**

Marc Rich is reported to have traded several commodities, including oil, with the Romanian regime of Nicolae Ceausescu.<sup>56</sup> At the time, Rich reportedly had his own refineries based in Romania.<sup>57</sup> Trade unionists in Romania have accused Rich of cashing in on the fortunes that Ceausescu stole from the Romanian people.<sup>58</sup> It also appears that, based on documents received by the Committee from the U.S. Department of Agriculture, Marc Rich was trading grain with the Ceausescu regime in the late 1980s.<sup>59</sup> As is discussed in detail below, these sales (in addition to sales to countries like China, the Soviet Union, and Saudi Arabia) resulted in Rich's companies receiving \$95 million from the Department of Agriculture through

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<sup>52</sup> See John Hooper, *Oil Traders Get Rich in Global Game of Chess*, THE GUARDIAN (London), Aug. 7, 1990. See also Jim Hougan, *King of the World* (Marc Rich), PLAYBOY, Feb. 1, 1994, at 104.

<sup>53</sup> Paul Klebnikov, *How Rich got Rich*, FORBES, June 22, 1992, at 41.

<sup>54</sup> Ian Rodger, *Marc Rich Hopes for Resolution of Tax Case*, FINANCIAL TIMES (London), Mar. 12, 1993, at 26.

<sup>55</sup> A. CRAIG COPETAS, METAL MEN: MARC RICH AND THE 10-BILLION-DOLLAR SCAM 115 (1985).

<sup>56</sup> *Romania: Life After Debt*, INTERNATIONAL TRADE FINANCE, May 18, 1989.

<sup>57</sup> Jim Hougan, *King of the World* (Marc Rich), PLAYBOY, Feb. 1, 1994, at 104.

<sup>58</sup> *Id.*

<sup>59</sup> See Department of Agriculture Document Production (Minutes of Richco Grain Board Meeting, Jan. 6, 1987); Department of Agriculture Document Production (Listing of E.E.P. Awards Made to Richco Grain, Sept. 27, 1989) (Exhibit 3).

a program that provided surplus grain to companies selling subsidized grain abroad.<sup>60</sup> This led to an investigation by then-Congressman, and later Secretary of Agriculture, Dan Glickman. Glickman's investigation would eventually lead the first Bush Administration to direct the Department of Agriculture to bar Rich's companies from receiving any new contracts.

### **i. Serbia**

One document from the Office of Foreign Assets Control produced to the Committee by the U.S. Department of Treasury indicates that Rich was also dealing with Serbia in violation of U.S. and international sanctions.<sup>61</sup> Press accounts indicate that Rich violated the U.N. trade embargo by dealing with Belgrade in a variety of commodities, including copper and oil.<sup>62</sup> According to an article in *The Oil Daily*, at the time of the U.N. embargo, Serbia reportedly had a deal in place with Marc Rich to process crude oil in Romania.<sup>63</sup>

When asked at a Committee hearing about allegations relating to Marc Rich's transactions with rogue states, Rich's lawyer Jack Quinn responded "I don't know the answer to that."<sup>64</sup> When asked about the White House's knowledge and research of these activities, White House Counsel Beth Nolan told the Committee that she never received an intelligence briefing and never explained Rich's shady dealings to the President.<sup>65</sup> While it may be understandable that Jack Quinn would not know — or at least not want to know — about Rich's dealings with so many dictatorships and rogue regimes, it is inexcusable that the White House failed to take the time to learn about these disturbing details.<sup>66</sup>

It is clear that Rich built his fortune doing business without legal, ethical, or even moral restraints. He regularly dealt with corrupt officials, dictators and rogue regimes. U.S. and international embargoes and sanctions were not barriers to Rich, merely hurdles to be climbed over, under, or around. As is discussed in more detail below, it is shameful and an embarrassment to the United States that the Clinton Administration did not take adequate steps to determine the extent of Marc Rich's illegal and unethical business activities before the President granted his pardon. This failure by the Clinton Administration is especially troubling in light of the fact that Marc Rich built his fortune by trading with so many enemies of the United States.

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<sup>60</sup> Bruce Ingersoll, *U.S. Suspends Grain Export Subsidies for Firm Linked to Fugitive Marc Rich*, WALL ST. J., Oct. 12, 1989, at sec. 3, p. 19.

<sup>61</sup> Department of Treasury Document Production 000652 (Memorandum from R. Richard Newcomb, Director of the Office of Foreign Assets Control, Department of the Treasury, to Ronald K. Noble, Under Secretary for Enforcement, Department of the Treasury (Sept. 16, 1994)) (Exhibit 2).

<sup>62</sup> Michael Dobbs, *Rich Made his Fortune by Breaking the Rules*, WASH. POST, Mar. 13, 2001, at A1.

<sup>63</sup> Roger Benedict, *U.N. Oil Cutoff of Serbia Hinges on Russia, China* (Security Council Vote), OIL DAILY, June 1, 1992, at 1.

<sup>64</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 111 (Mar. 1, 2001) (testimony of Jack Quinn).

<sup>65</sup> *Id.* at 374.

<sup>66</sup> The Committee, however, does not take the position that it was "understandable" for Quinn not to have known about Rich's dealings with rogue states. While Quinn's actions may be legally permissible, one must think long and hard about the morality of Quinn's actions. Given Rich's status as a fugitive, common sense and due diligence should have led Quinn to inquire further into Rich's past dealings. However, the power of money is often enough to promote willful ignorance.

## B. The Criminal Charges Against Marc Rich and Pincus Green

### 1. The Investigation of Rich and Green

Marc Rich's illegal business practices in the United States came under the scrutiny of the United States government in the early 1980s. In the fall of 1981, staff from the Fraud Section of the Criminal Division of the Department of Justice called Assistant U.S. Attorney Morris "Sandy" Weinberg, Jr. of the Southern District of New York ("SDNY").<sup>67</sup> They told Weinberg of a lead they had received concerning a crude oil reseller named Marc Rich whose company had an office in New York City.<sup>68</sup> As Weinberg and his fellow former prosecutor Martin Auerbach explained to the Committee during the first hearing on the Rich pardon, this initial lead on Marc Rich was developed through oil reseller prosecutions in Abilene, Texas.<sup>69</sup> John Troland and David Ratliff of West Texas Marketing — who had been prosecuted for illegal oil reselling — provided information about the offshore laundering of funds by Rich.<sup>70</sup>

In December of 1981, when Weinberg flew to Texas to investigate, he obtained a furlough for the principals of West Texas Marketing ("WTM"), who took him to their office.<sup>71</sup> Upon reviewing their records of WTM's dealings with Marc Rich, Weinberg confirmed that Rich earned \$70 million in illegal oil resale profits in 1980 and 1981 and had funneled the money to his Swiss company in order to evade federal income tax and federal energy oil control regulations.<sup>72</sup> As Weinberg testified to the Committee, it was then apparent to him that he and his office had uncovered "the biggest tax fraud in history."<sup>73</sup> As he further testified:

The case against Mr. Rich and Mr. Green was very strong. . . . Like any fraud case, the evidence was rife with false documents, inflated invoices, sham transactions and off the books deals. The conspirators kept track of the illegal profits in hand written journals in what was described as the "pot." . . . [T]he evidence included meetings between co-conspirators and Marc Rich regarding the pots and the scheme to funnel the illegal profits out of the country to off-shore accounts.<sup>74</sup>

The illegal scheme that Weinberg uncovered stemmed from Marc Rich's evasion of specific Department of Energy ("DOE") regulations. In September of 1980, pursuant to the Emergency Petroleum Allocation Act of 1973,<sup>75</sup> the DOE promulgated regulations establishing the permissible average markup for oil reselling.<sup>76</sup> The permissible price was different for

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<sup>67</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 97 (Feb. 8, 2001) (prepared testimony of Morris "Sandy" Weinberg, Jr., and Martin J. Auerbach, former Assistant U.S. Attorneys for the S.D.N.Y., Department of Justice).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 97–98.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 98.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* The eventual indictment accused Marc Rich's companies of evading taxes on over \$100 million in unreported income.

<sup>74</sup> *Id.* at 104.

<sup>75</sup> 15 U.S.C. § 751, *et seq.*

<sup>76</sup> Indictment, *U.S. v. Marc Rich, Pincus Green et al.* 8–9 (S.D.N.Y. Mar. 6, 1984) (S 83 Cr. 579) (Exhibit 4).

different regulatory categories of crude oil. The categories contemplated by the regulations included: “old” or “lower tier;” “new” or “upper tier;” and “stripper.”<sup>77</sup> Under the regulations, every seller or reseller of domestic crude oil was required to certify to the purchaser the respective amounts and prices of old oil, new oil, and stripper oil contained in the crude oil that was being sold.<sup>78</sup> The regulations prohibited markups of more than 20 cents per barrel of oil for a reseller such as Marc Rich’s company, Marc Rich + Co. International, Ltd. (“International”).<sup>79</sup> International was also required to submit ERA-69 forms to the DOE on a monthly basis that set forth the dollar amount of any permissible average markup overcharges so that they could be immediately refunded to customers.<sup>80</sup>

Beginning in September of 1980, Marc Rich and Pincus Green agreed with the principals of West Texas Marketing that when International was limited to the 20 cents per barrel markup, the huge profits from their crude oil transactions would be retained by WTM rather than being reflected on the books of International.<sup>81</sup> These profits were referred to as the “pot.”<sup>82</sup> As the indictment against them would allege, to further conceal the scheme, Rich, Green and the principals at WTM conspired to have WTM prepare and mail invoices to International, which falsely indicated that WTM had sold oil barrels to International “at the high world market price, when in truth and in fact . . . International was paying a far lower price upon WTM’s agreement secretly to kickback to [Rich and Green] the huge profits held by WTM for . . . International in the ‘pot.’”<sup>83</sup>

The profits in these “pots” were moved out of the U.S. to foreign bank accounts at the direction of Marc Rich and Pincus Green.<sup>84</sup> This would occur through sham foreign loss transactions involving Marc Rich + Co., A.G., (“A.G.”).<sup>85</sup> From October 1980 through May 1981, Rich, Green, and their companies moved more than \$23 million in income to offshore

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<sup>77</sup> *Id.* at 6. As the indictment states, “Crude oil coming from a well at or below a designated 1972 level of production was labelled ‘old’; ‘new’ oil referred to crude oil discovered since 1973 or oil obtained from existing wells in excess of the 1972 level of production; ‘stripper’ oil referred to crude oil produced from a well whose average daily production was less than [sic] ten barrels.”

<sup>78</sup> *Id.* at 7.

<sup>79</sup> *Id.* at 8–9.

<sup>80</sup> *Id.* at 9.

<sup>81</sup> *Id.* at 10–11.

<sup>82</sup> *Id.* at 11.

<sup>83</sup> *Id.* The manipulation of the oil categories by oil resellers such as Marc Rich and his companies was referred to as “daisy chaining.” As is explained in the indictment:

During the period of price controls, in order to evade the regulations and produce huge profits, controlled oil was on occasion sold through a series of oil resellers known in the crude oil industry as a “daisy chain.” The defendant INTERNATIONAL frequently participated as the original reseller of controlled oil into a “daisy chain.” The “daisy chain” was utilized by the original reseller to make it extremely difficult to trace the movement of controlled barrels and to facilitate alteration of the certifications on controlled barrels into stripper barrels (uncontrolled) which could then be sold at the much higher world market price.

*Id.* at 7–8.

<sup>84</sup> *Id.* at 11.

<sup>85</sup> *Id.* at 11–12.

accounts from WTM “pots.”<sup>86</sup> These fraudulent transactions were transmitted through telefaxes and wire transfers.<sup>87</sup>

This scheme by Rich and Green was essentially repeated with another company, Listo Petroleum, for a total of \$47 million.<sup>88</sup> Rich and Green also entered into false deduction transactions with Charter Crude Oil Company, as well as ARCO.<sup>89</sup> In the case of Charter, at the direction of Marc Rich, International prepared fraudulent invoices purporting that International had purchased foreign crude oil from A.G. at its fair market value and subsequently sold it to a Charter subsidiary at a substantial discount.<sup>90</sup> As a result, International fraudulently reduced its amount of taxable income by more than \$31 million dollars.<sup>91</sup> In the ARCO case, in the fall of 1980, Rich and Green’s company Rescor invoiced their other company, International, for nearly \$3 million. The invoice concerned a non-existent contract for the sale of foreign crude oil to Rescor by International. The fraudulent invoice made it appear that International had failed to provide oil to Rescor which subsequently had to purchase a similar quantity of oil from Arco at five dollars per barrel above the original contract price.<sup>92</sup> As a result, International fraudulently reduced its amount of taxable income for 1980 by nearly \$3 million.<sup>93</sup>

Finally, Weinberg uncovered evidence of Marc Rich and Pincus Green trading with Iran during the American hostage crisis. In 1979 and 1980, President Carter issued several executive orders and the Department of Treasury subsequently promulgated regulations that prohibited any American from trading with Iran without a special license from the Department of Treasury.<sup>94</sup> The regulations further required all individuals engaging in trade with Iran to keep records to be available for examination by the Office of Foreign Assets Control.<sup>95</sup> Nevertheless, on April 30, 1980, Marc Rich + Co., A.G. entered into a contract with the National Iranian Oil Company (“NIOC”) for the purchase of crude and fuel oil from May 1, 1980 through September 30, 1980.<sup>96</sup> As the indictment indicates, from their offices in New York City, Rich and Green in turn sold 6,250,000 barrels of the Iranian oil to an oil company in Bermuda for a total of more than \$200 million. In order to conceal this scheme, Rich and Green did not disclose to their banks in the United States that the ultimate beneficiary of the U.S. dollars was the NIOC.<sup>97</sup> Rich and Green further devised a secret code for their interoffice cable communications to disguise the participation of the Iranian oil company.<sup>98</sup> The scheme was completed through several wire

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<sup>86</sup> *Id.* at 12.

<sup>87</sup> *Id.* at 12–13.

<sup>88</sup> *Id.* at 13, 15.

<sup>89</sup> *Id.* at 15–18.

<sup>90</sup> *Id.* at 16.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 17–18.

<sup>93</sup> *Id.* at 18.

<sup>94</sup> *Id.* at 44–45. The executive orders issued pursuant to the International Economic Emergency Powers Act of 1977 included Executive Orders No. 12,170, 12,205, and 12,211.

<sup>95</sup> *Id.* at 45.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 46.

<sup>98</sup> *Id.* at 47.

transactions and transmissions, and ultimately caused United States dollars to be illegally transferred to Iran at the same time that Iran was holding American hostages.<sup>99</sup>

In early 1982, the Southern District of New York began subpoenaing millions of documents from oil companies and crude oil resellers in the United States that had done business with Marc Rich.<sup>100</sup> Prosecutors also served subpoenas on Marc Rich's companies in New York.<sup>101</sup> The Southern District decided to subpoena Marc Rich + Co. A.G. — even though it was a Swiss company — because there were sufficient contacts through its American subsidiary to give them jurisdiction for enforcing document subpoenas.<sup>102</sup> Rich, who had retained high-powered attorneys such as Edward Bennett Williams, Peter Fleming, and former federal judge Marvin Frankel, sought to quash the grand jury subpoenas.<sup>103</sup> However, United States District Judge Leonard Sand denied the Rich team's motion to quash and ordered A.G. to produce the documents from Switzerland.<sup>104</sup> The Second Circuit Court of Appeals affirmed Judge Sand's decision in May of 1983.<sup>105</sup> When Marc Rich + Co. A.G. refused to produce the documents, Judge Sand held the company in contempt and ordered a \$50,000 per day fine in order to compel production of the documents.<sup>106</sup> Nevertheless, Rich and his company refused to produce the documents or pay the fine.<sup>107</sup>

Rich's behavior during the litigation soon became even more confrontational and deceptive. As the Southern District of New York was to learn, on June 29, 1983, Rich quietly sold off his company's only American asset.<sup>108</sup> Judge Sand called the sale a "ploy to frustrate the implementation of the court's order," and thereby ordered a freeze of A.G.'s assets in the United States.<sup>109</sup> The Second Circuit Court of Appeals also concluded that the sale was a fraud.<sup>110</sup> As a result of these rulings by the courts, Rich and his lawyers agreed to negotiate a resolution of the contempt issue. A.G. agreed to pay the more than \$1 million in contempt fines that had accumulated and to continue paying the contempt fines until all of the documents had been produced from Switzerland.<sup>111</sup>

At first, Rich's company appeared to be complying with the agreement by producing hundreds of thousands of documents from Switzerland. However, on August 9, 1983, four days after the agreement, the Southern District received an anonymous tip that subpoenaed documents

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<sup>99</sup> *Id.* at 47, 49. These charges were brought under 31 CFR §§ 535.206(a)(4), 535.208, 535.701, and 50 USC § 1705, and 18 USC § 2.

<sup>100</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 99 (Feb. 8, 2001) (prepared testimony of Morris "Sandy" Weinberg, Jr., and Martin J. Auerbach, former Assistant U.S. Attorneys for the S.D.N.Y., Department of Justice).

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* at 100.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 101.

were being secreted out of the U.S. by a paralegal of the law firm Milgrim Thomajan & Lee.<sup>112</sup> In responding to the tip, the Southern District seized two steamer trunks full of subpoenaed documents from a Swiss Air flight.<sup>113</sup> As a result of this incident, Judge Sand ordered the production of every document of the Marc Rich companies in the world that had been subpoenaed.<sup>114</sup> Rich and his legal team argued that the Swiss government had already seized all of the remaining documents, thereby rendering compliance with the agreement they had reached impossible.<sup>115</sup> Judge Sand nevertheless ruled that the contempt fines should continue.<sup>116</sup> In total, Marc Rich + Co. A.G. paid over \$21 million in contempt fines over the course of the litigation.<sup>117</sup>

Rich's attorneys made a number of attempts to settle the case before an indictment was issued. When Rich hired Edward Bennett Williams to represent him, Williams assured him that he could settle the case if Rich paid a large fine, telling Rich "I can get rid of it for \$30 million."<sup>118</sup> Williams then went to Sandy Weinberg and asked how much the government wanted to settle the case. When Weinberg told Williams he was not interested, Williams asked Weinberg what he had in mind.<sup>119</sup> Weinberg responded "J-A-I-L."<sup>120</sup> Later, Williams would offer as much as \$100 million to settle the Rich case.<sup>121</sup> All of these offers were rejected.

## 2. The Indictment

In September of 1983, a federal grand jury in New York returned a 51-count indictment against Marc Rich, Pincus Green, and their companies.<sup>122</sup> The original indictment was restructured into a 65-count indictment in March of 1984.<sup>123</sup> All of the first 42 counts were

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<sup>112</sup> *Id.* When asked about this episode at the Committee's hearing, Jack Quinn testified "what I have been told is that those documents were going to Switzerland for the purpose of being reviewed for privilege by the lawyers." *Id.* at 113 (testimony of Jack Quinn). In response to this claim, Martin Auerbach testified: "With respect to the documents that were being slipped out of the country, the suggestion was never that those were being reviewed for attorney-client privilege. It was simply that it would be more convenient for counsel to review them in Switzerland than [sic] to review them in New York. Now, we had tons and tons of documents delivered to us. These two steamer trunks were slipping out. We didn't get a call from them saying, you know, we've got some people over in Zug with nothing better to do than to look at documents; would you mind if we took them over there outside of the jurisdiction at the time when we're in contempt for refusing to produce documents from Switzerland?" *Id.* (testimony of Martin J. Auerbach, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice).

<sup>113</sup> *Id.* at 101 (prepared testimony of Morris "Sandy" Weinberg, Jr., and Martin J. Auerbach, former Assistant U.S. Attorneys for the S.D.N.Y., Department of Justice).

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at 101-02. The Committee does not know Rich's precise role in orchestrating this action by the Swiss government. Rich's power in that country makes it reasonable to assume that he might have played a part in creating the condition that made his representations in the United States possible. The Committee is not aware of the Swiss government penalizing Rich or taking any other action against him.

<sup>116</sup> *Id.* at 102.

<sup>117</sup> *Id.*

<sup>118</sup> EVAN THOMAS, *THE MAN TO SEE: EDWARD BENNETT WILLIAMS* 415 (1991).

<sup>119</sup> *Id.* at 416.

<sup>120</sup> *Id.*

<sup>121</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 103 (Feb. 8, 2001) (prepared testimony of Morris "Sandy" Weinberg, Jr., and Martin J. Auerbach, former Assistant U.S. Attorneys for the S.D.N.Y., Department of Justice).

<sup>122</sup> *Id.*

<sup>123</sup> See Indictment, *U.S. v. Marc Rich, Pincus Green et al.* (S.D.N.Y. Mar. 6, 1984) (S 83 Cr. 579) (Exhibit 4).



charged against Marc Rich, Pincus Green, Clyde Meltzer, A.G., and Marc Rich + Co, International Ltd. The superseding indictment was arranged to include in counts 1 through 23 the scheme to defraud the IRS.<sup>124</sup> These charges were brought pursuant to 18 USC § 1343, the federal statute prohibiting wire fraud.<sup>125</sup> These charges related to the fraudulent transactions among WTM, and Marc Rich's companies discussed above. Counts 24 through 38 included the scheme to defraud the Department of Energy, and were brought pursuant to 18 USC § 1341, prohibiting mail fraud.<sup>126</sup> Count 39 and 40 were racketeering charges brought under the RICO statute, 18 USC § 1962(c).<sup>127</sup> Counts 41 and 42 included two tax evasion counts for Marc Rich + Co. International's 1980 and 1981 tax returns, covering an amount totaling over \$100 million in unreported income which was concealed by the efforts of Rich, Green, Meltzer, and Rich's two companies.<sup>128</sup> As stated in the indictment, International was able to evade more than \$49 million in taxes.<sup>129</sup> These counts were also brought against Marc Rich and Pincus Green personally. The tax and racketeering counts were approved and authorized by the Department of Justice.<sup>130</sup> Counts 43 through 57 alleged that Rich defrauded the Department of Treasury for his transactions with the Iranians during the oil embargo and the American hostage crisis. Finally, counts 57 through 65 charged Rich with "trading with the enemy" for Rich's secret deals with the Iranians.<sup>131</sup> In the superseding indictment, these charges were not leveled against the companies. As a letter accompanying the indictment states, "[t]he primary focus of those counts has always been the activities of the American individuals, Marc Rich and Pincus Green."<sup>132</sup>

### 3. Rich and Green Flee the Country

Even though their companies eventually pled guilty and paid heavy fines, Rich and Green personally refused to face the U.S. justice system. Rich and Green were out of the country when their indictments were handed down. They refused to return to the United States, even after warrants were issued for their arrest. As Weinberg and Auerbach explained to the Committee, "[b]y the time of the indictment, Marc Rich and Pincus Green had made it clear that they would not return to the United States to face the charges. Apparently, they had quietly left the United States in June 1983 at a time when their lawyers were attempting to negotiate a resolution of the case."<sup>133</sup> Even Rich's own lead attorney, Edward Bennett Williams, was shocked by Rich's conduct:

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<sup>124</sup> *Id.* at 19–22.

<sup>125</sup> *Id.* at 22.

<sup>126</sup> *Id.* at 22–25.

<sup>127</sup> *Id.* at 33–34.

<sup>128</sup> *Id.* at 40–42.

<sup>129</sup> *Id.*

<sup>130</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 102–03 (Feb. 8, 2001) (prepared testimony of Morris "Sandy" Weinberg, Jr., and Martin J. Auerbach, former Assistant U.S. Attorneys for the S.D.N.Y., Department of Justice).

<sup>131</sup> *U.S. v. Marc Rich, Pincus Green et al.* (S.D.N.Y. Mar. 6, 1984) (S 83 Cr. 579). See also 50 U.S.C. § 1705.

<sup>132</sup> Cover letter to superseding indictment, *U.S. v. Marc Rich, Pincus Green et al.* (S.D.N.Y. Mar. 6, 1984) (S 83 Cr. 579) (Exhibit 4).

<sup>133</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 103 (Feb. 8, 2001) (prepared testimony of Morris "Sandy" Weinberg, Jr., and Martin J. Auerbach, former Assistant U.S. Attorneys for the S.D.N.Y., Department of Justice). It should be noted that by this point, Rich and Green had already renounced their U.S. citizenship and become citizens of Spain and perhaps Bolivia.

Rich responded to the warrant for his arrest by refusing to return from Switzerland. Williams was standing in the office of Marvin Davis in Los Angeles when he heard the news that his client was on the lam. According to Davis, Williams shouted in the phone, “You know something, Marc? You spit on the American flag. You spit on the jury system. Whatever you get, you deserve. We could have gotten the minimum. Now you’re going to sink.”<sup>134</sup>

Despite the outrage of their own lawyers, as well as the prosecutors, Rich and Green never returned to the country to face the charges. They remained fugitives in Switzerland for more than seventeen years until they received their pardons from President Clinton.

#### **4. The Corporate Guilty Pleas**

Notwithstanding the fact that Rich and Green would not return to face the charges against them, their companies entered plea negotiations with the government. A year after the indictment was handed down, Marc Rich’s companies pled guilty to evading \$50 million in taxes. In the allocution on October 11, 1984, Peter Fleming, counsel for Marc Rich + Co. International, Ltd. stated to the court:

Beginning in September 1980 International generated millions of dollars of income from crude oil transactions which International should have disclosed but intentionally did not disclose to the Internal Revenue Service and the Department of Energy.

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In connection with matters within the jurisdiction of agencies of the United States, specifically the Department of Energy and the Internal Revenue Service, International and A.G. knowingly and willfully made those documents and the ERA 69s filed with the Department of Energy which were false in that they failed to disclose material facts regarding the actual income from those crude oil transactions, in violation of Title 18, United States Code, Section 1001, which is the charging statute of counts 1 through 38.

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In addition, by knowingly and willfully failing to report at least \$50 million of taxable income generated from these transactions for the years 1980 and 1981, International committed income tax evasion for these years in violation of Title 26, United States Code, Section 7201.<sup>135</sup>

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<sup>134</sup> EVAN THOMAS, *THE MAN TO SEE: EDWARD BENNETT WILLIAMS* 417 (1991). Rich denied Davis’ account of this conversation, saying, “There is not a shred of truth in it.”

<sup>135</sup> Transcript of Allocution, *U.S. v. Marc Rich + Co., A.G. et al.* 18–19 (S.D.N.Y. Oct. 11, 1984) (S 83 Cr. 579) (Exhibit 5).

Counsel for Marc Rich + Co. A.G. then stated to the court, “[a]s you know, A.G. is charged only in counts 1 through 38 of this information, and A.G. adopts Mr. Fleming’s statements in connection with those counts.”<sup>136</sup> As part of their guilty plea, A.G. and International (which by then had been renamed “Clarendon, Ltd.”), also agreed to pay the United States \$150 million,<sup>137</sup> and agreed to waive any right to recover the \$21 million in fines they had already paid the government.<sup>138</sup> The total amount that the companies paid to the government for their crimes was \$200 million.<sup>139</sup> As then-United States Attorney Rudolph Giuliani explained in court, this represented the largest amount of money ever recovered by the United States in a criminal tax evasion case.<sup>140</sup>

The guilty pleas and fines paid by the companies controlled by Marc Rich and Pincus Green clearly demonstrate the guilt of the two principals. Based on the overwhelming evidence against them, it is no wonder Rich and Green fled the country rather than face trial. The evidence, including the admissions by Marc Rich’s companies, also explains why Martin Auerbach of the Southern District of New York could confidently respond to Jack Quinn’s criticism at the Committee’s hearing, stating, “Mr. Quinn has suggested to the Committee and to the Nation that we had a legal house of cards. Well, if we did, it was all aces.”<sup>141</sup>

## **C. Attempts to Bring Rich and Green to Justice**

### **1. Attempts to Extradite Rich and Green**

After Rich and Green fled the country in anticipation of their indictment, the Southern District of New York made many attempts to have foreign governments extradite the two fugitives in order to bring them back to the country to stand trial on the numerous charges against them. On July 20, 1984, the United States requested extradition of Rich and Green from Switzerland. That request was rejected by the Swiss government in September of 1984 on the basis that the offenses charged against Rich and Green were “fiscal violations” and violations of “provisions concerning currency, trade policy and economic policy”<sup>142</sup> and that the government of Switzerland did not recognize the charges against Rich and Green as extraditable crimes. In June of 1994, the Justice Department attempted to extradite Rich and Green from Israel, but the Israeli government also turned down the request. Israel’s Attorney General, Michael Ben-Ya’ir, told the U.S. Government that the extradition treaty between the two governments did not include fiscal offenses.<sup>143</sup> And even though Rich had become a citizen of Spain, prosecutors

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<sup>136</sup> *Id.* at 20.

<sup>137</sup> *Id.* at 3.

<sup>138</sup> *Id.* at 4.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 5.

<sup>141</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 106 (Feb. 8, 2001) (testimony of Martin J. Auerbach, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice).

<sup>142</sup> Unofficial translation of a note delivered on September 25, 1984, by the Office for Police Matters to the Embassy of the United States. See “They Went Thataway: The Strange Case of Marc Rich and Pincus Green,” *Hearing Before the Comm. on Govt. Operations*, 102d Cong. 3 (May 27, 1992).

<sup>143</sup> Bo’az Ga’on, *Rich as Korach*, MA’ARIV WEEKEND MAGAZINE, Oct. 1, 1999 (Exhibit 6).

could not extradite him from that country because, like Switzerland and Israel, Spain does not extradite its citizens for tax evasion.

## **2. Marc Rich and Pincus Green's Attempts to Renounce Their Citizenship**

After fleeing the United States, Rich and Green attempted to renounce their U.S. citizenship for the specific purpose of avoiding extradition on the charges against them. According to a U.S. government memorandum from the Embassy in Madrid, Rich expatriated himself on September 3, 1982, prior to his indictment, and became a naturalized Spaniard on February 11, 1983.<sup>144</sup> As Rich explained in a letter to the U.S. Consul General in Zurich, "I was naturalized under the laws of Spain, swore an oath of allegiance to the King of Spain, and formally stated that I thereby renounced U.S. nationality."<sup>145</sup> On May 27, 1983, Green, and perhaps Rich, were naturalized as Bolivian citizens according to on U.S. State Department cables.<sup>146</sup> In the case of Green, a letter from the Ministry of the Interior in Bolivia states that "the privilege of Bolivian nationality has been given to Pincus Green Bergstein, who previously renounced his nationality of origin and complied with the required procedures determined by current legal regulations."<sup>147</sup> According to a letter from the Department of Justice to Congressman Robert Wise in November of 1991, Rich and Green also became citizens of Israel in 1983.<sup>148</sup> The pardon application submitted to the White House by Jack Quinn also lists Green as a citizen of Switzerland, although it does not list Rich as a Swiss citizen, and it appears that Rich is, in fact, not a Swiss citizen.<sup>149</sup>

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<sup>144</sup> Department of State Document Production (Government Memorandum from U.S. Embassy in Madrid to U.S. Department of State, Aug. 25, 1983) (Exhibit 7).

<sup>145</sup> Department of State Document Production (Letter from Marc Rich to Ruth H. Van Heuven, U.S. Consul General, Switzerland (Oct. 27, 1992)) (Exhibit 8). In this and other letters, Rich claims that he became a citizen of Spain in July of 1982, earlier than the date indicated by the U.S. government. Spanish government documents appear to confirm this. The Second Circuit Court of Appeals also affirmed a district court ruling that Rich's attempt to renounce his citizenship in Madrid had failed. The Second Circuit held:

The evidence strongly supports the district court's finding that Rich had no intention whatsoever to relinquish his American citizenship prior to commencement of this action. Despite mouthing words of renunciation before a Spanish official, he refused to acknowledge such renunciation before the United States Consul in Madrid before this action commenced. Instead, he brought a Swiss action as an American national, traveled on his American passport, and publicized himself in a commercial register as a United States citizen.

*Action S.A. v. Marc Rich & Co., Inc.*, 951 F.2d 504, 507 (2nd Cir. 1991).

<sup>146</sup> Department of State Document Production (Letter from the American Consul to Pincus Green (Dec. 19, 1983)) (Exhibit 9). The State Department apparently believed that Rich and Green entered Bolivia illegally because of the restrictions on their passports, which would have jeopardized their claim of Bolivian citizenship. See U.S. Marshals Service Document Production (Department of State Cable, Oct. 11, 1983) (Exhibit 10).

<sup>147</sup> Department of State Document Production (Letter from Dr. Emilio Perez Barrios, Sub-Secretary of Immigration, Bolivian Ministry of Interior, to the American Consul (Sept. 9, 1983)) (Exhibit 11).

<sup>148</sup> Department of Justice Document Production DOJ/SDNY-MR-00008-09 (Letter from W. Lee Rawls, Assistant Attorney General, Office of Legislative Affairs, Department of Justice, to the Honorable Robert E. Wise, Jr., Chairman, Subcommittee on Govt. Information, Justice, and Agriculture, Comm. on Govt. Operations (Nov. 21, 1991)) (Exhibit 12).

<sup>149</sup> Petition for Pardon for Marc Rich and Pincus Green 1, 3 (Dec. 11, 2000) (Appendix III).

In 1983, the State Department informed the Southern District of New York that Rich was seeking to renounce his U.S. citizenship. The American embassy attempted to contact Rich to have him fill out a questionnaire to determine his citizenship, but he never responded.<sup>150</sup> Rich and Green also never responded to letters from the American Consul in Bern, Switzerland attempting to determine their citizenship. On September 29, 1993, the U.S. State Department revoked Rich's American passports because of the "outstanding federal felony warrant of arrest issued by the U.S. District Court for the Southern District of New York."<sup>151</sup> The next day, the State Department also revoked Pincus Green's passport.<sup>152</sup>

The confusion over Marc Rich's citizenship status also became an issue of concern to the U.S. Treasury Department in November of 1991. A letter written by the Office of Foreign Assets Control prompted the State Department to make a determination of Rich's citizenship. In its response of April 14, 1992, the State Department made a final determination that Marc Rich had failed to renounce his citizenship, and was still a U.S. citizen.<sup>153</sup> The conclusion was based on the fact that the Department never approved Rich's Certificate of Loss of Nationality.<sup>154</sup> It was also based on the fact that Rich did not demonstrate the requisite intent to lose his U.S. Citizenship — in part because he used his U.S. passport to travel to the United States after he became a Spanish citizen.<sup>155</sup>

Despite the U.S. Government's official finding that Rich is still a U.S. citizen, Rich and his lawyers claim that he is not a U.S. citizen. When he appeared on television after the Rich pardon, Jack Quinn stated "he is a U.S. citizen."<sup>156</sup> However, when he appeared before the Committee, Quinn stated that he "misspoke" when he was on *Meet the Press*, and took the position that Rich had indeed renounced his citizenship. Sandy Weinberg, testifying with Quinn, observed:

I suppose when he [Marc Rich] heard on television from Mr. Quinn that he was a citizen, I'm sure it did concern him whether or not he had a problem over the last 20 years. I suspect that . . . Mr. Quinn got a call the next day saying "no, I'm not a citizen" because I believe that there are some very significant tax implications if he's been a citizen all these years.<sup>157</sup>

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<sup>150</sup> Department of State Document Production (Letter from Julian L. Bartley, Consul, Embassy of the United States of America in Madrid, to Marc Rich (Mar. 25, 1983)) (Exhibit 13).

<sup>151</sup> U.S. Marshals Service Document Production (State Department Cable, Sept. 29, 1983) (Exhibit 14).

<sup>152</sup> U.S. Marshals Service Document Production (State Department Cable, Sept. 30, 1983) (Exhibit 15).

<sup>153</sup> Department of Treasury Document Production 000660-61 (Letter from Carmen A. DiPlacido, Director of the Office of Citizens Consular Services, Department of State, to Richard Newcomb, Director of the Office of Foreign Assets Control, Department of the Treasury (Apr. 14, 1992)) (Exhibit 16).

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Meet the Press* (NBC television broadcast, Jan. 28, 2001).

<sup>157</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 167 (Feb. 8, 2001) (testimony of Morris "Sandy" Weinberg, Jr., former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice).

### 3. U.S. Attempts to Apprehend Rich and Green

Between 1984 and 1992, the Department of Justice submitted five provisional arrest requests to various countries in an attempt to apprehend Rich and Green.<sup>158</sup> None of these attempts were successful. As early as October 9, 1985, Rich and Green were listed as wanted international criminals by the U.S. National Central Bureau of Interpol.<sup>159</sup> In 1987, Interpol issued an international “red notice” (warrant) that requested the provisional arrest of Rich and Green with the eventual goal of extradition.<sup>160</sup> On several occasions, the FBI and the U.S. Marshals Service appeared ready to apprehend the two fugitives. One operation set up by the Marshals Service to snare Rich, referred to as “the Otford Project,” was nearly successful.<sup>161</sup> In the fall of 1987, a U.S. Marshal assigned to the project barely missed apprehending Rich in France after he canceled a meeting with an African oil minister.<sup>162</sup> A few months later, in November of 1987, the U.S. Marshals’ Service again came close to capturing Rich. They were tipped off by a businessman close to Rich that Rich would be taking a private plane to England for a weekend party. The Marshals set the trap for Rich at the Biggen Hill Airport in Kent. However, thick fog settled in over England, and Rich’s plane turned back to Switzerland.<sup>163</sup>

In 1986, prior to the international arrest warrant being issued, Rich had another brush with the law. Rich had been asked by his wife Denise to visit her in London. After the visit, Rich was at Heathrow airport to catch the return Swissair flight to Zurich. As he approached the gate, Rich apparently noticed that the security staff was conducting a complete search of luggage and identification.<sup>164</sup> Rather than submit to the search, Rich apparently went to a public telephone and left three checks payable to him for £1.6 million stuck between the pages of a telephone book.<sup>165</sup> Free of the checks that Rich thought would identify him to the British authorities, Rich then boarded the flight for Zurich.<sup>166</sup>

In September of 1991, the FBI and Interpol attempted to arrest Rich in Finland.<sup>167</sup> According to a Finnish businessman who helped the FBI with the matter, Rich was tipped off that he would be arrested at the Helsinki airport, and he therefore turned his plane around before landing.<sup>168</sup> Other failed attempts to arrest Rich are indicated by several documents produced to the Committee. As an Interpol cable indicates, Rich was expected to be in Moscow both in May

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<sup>158</sup> See “They Went Thataway: The Strange Case of Marc Rich and Pincus Green,” *Comm. on Govt. Operations*, 102d Cong. 10 (May 27, 1992) (quoting Letter from W. Lee Rawls, Assistant Attorney General, Office of Legislative Affairs, Department of Justice, to the Honorable Robert E. Wise, Jr., Chairman, Subcommittee on Govt. Information, Justice, and Agriculture, Comm. on Govt. Operations (received Oct. 11, 1991)).

<sup>159</sup> Interpol Document Production (Wanted International Criminal Request, Oct. 9, 1985) (Exhibit 17). The document itself lists Rich and Green as wanted for the indictments in the Southern District of New York for wire fraud, mail fraud, income tax evasion, racketeering, racketeering conspiracy, and trading with the enemy.

<sup>160</sup> Interpol Document Production (Interpol International Red Notice, June 4, 1992) (Exhibit 18).

<sup>161</sup> Craig Copetas, *The Sovereign Republic of Marc Rich*, REGARDIE’S, Feb. 1, 1990, at 46.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> Interpol Document Production (Letter from Darrell W. Mills, Chief, Interpol-USNCB (1991)) (Exhibit 19).

<sup>168</sup> Telephone Interview with Pertti Ruoho, FINNISH OIL TRADER (Feb. 22, 2001). See also Letter from Darrell W. Mills, Chief, Interpol-USNCB (1991)) (Exhibit 19).

and September of 1992. Attempts were made at the Justice Department in September of that year to “insure a provisional arrest warrant is in place should [Rich] appear in Moscow.”<sup>169</sup> In March of 1992, the U.S. Attorney for the Southern District of New York, as well as the Office of International Affairs at the Justice Department, made a request for Interpol to assist in apprehending Rich in Dushanbe, Tajikistan, based on information that he would be meeting with the new republic’s prime minister.<sup>170</sup> In fact, Interpol sent a senior officer directly to Dushanbe carrying the United States’ provisional arrest request.<sup>171</sup> A request for the arrest of Rich was also made in anticipation of his arrival in Czechoslovakia in February of 1992, when Rich was negotiating the purchase of the Slovak Aluminum Company.<sup>172</sup> Yet another document indicates that provisional arrest warrants were also issued for Marc Rich in France, Portugal, and Norway.<sup>173</sup>

It is difficult to believe that Marc Rich went from being an international fugitive, sought by teams of Marshals across the world, to a free man with the simple stroke of a pen. The effort to apprehend Marc Rich was the subject of intense law enforcement, diplomatic, and Congressional interest. Beyond the obvious negative effects of the Rich pardon, it also had a demoralizing effect on the individuals who tried for so long to track down Rich. In addition, it undermines U.S. authority to apprehend criminal fugitives. When the United States government attempts to apprehend someone by utilizing Interpol and working with law enforcement in foreign countries, it is reasonable to assume that those persons being sought should have to face trial in the United States. By granting pardons to Rich and Green, international law enforcement efforts on behalf of the United States were seriously undermined.

#### **4. 1992 Congressional Hearings**

The Marc Rich matter and the failure of the government to apprehend him was an issue of great interest to this Committee when it was under a Democratic chairmanship in the early 1990s. In particular, Congressman Robert Wise held three days of hearings on the matter when he served as chairman of the Subcommittee on Government Information, Justice, and Agriculture of the Committee on Government Operations.<sup>174</sup> The hearings, entitled “The Strange Case of Marc Rich: Contracting with Tax Fugitives and At Large in the Alps,” also resulted in two Committee reports. One of those reports, entitled “They Went Thataway: The Strange Case of Marc Rich and Pincus Green,” focused on the efforts of the United States to apprehend the two fugitives.<sup>175</sup>

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<sup>169</sup> Interpol Document Production (Interpol-USNCB transmission, Sept. 1, 1992) (Exhibit 20).

<sup>170</sup> Interpol Document Production (Interpol-USNCB transmission, 1992) (Exhibit 21).

<sup>171</sup> *Id.*

<sup>172</sup> Interpol Document Production (Fax from Donald S. Donovan, Assistant Chief, Interpol-USNCB, to Don Ward, Deputy Chief, U.S. Marshals Service (Feb. 21, 1992)) (Exhibit 22).

<sup>173</sup> Interpol Document Production 000317 (Identifiers on Marc Rich, Nov. 19, 1991) (Exhibit 23).

<sup>174</sup> The Government Information, Justice, and Agriculture Subcommittee held three separate Marc Rich hearings on December 4, 1991, February 18, 1992, and March 5, 1992, entitled “The Strange Case of Marc Rich: Contracting with Tax Fugitives and At Large in the Alps.”

<sup>175</sup> “They Went Thataway: The Strange Case of Marc Rich and Pincus Green,” *Hearing Before the Comm. on Govt. Operations*, 102d Cong. (May 27, 1992).

Congressman Wise and his Subcommittee criticized the Reagan and Bush Administrations for failing to take adequate steps to apprehend Marc Rich. At a hearing on December 4, 1991, Congressman Mike Synar was particularly critical of the Department of Justice for failing to apprehend the fugitives:

It is unacceptable that the Justice Department has failed to show up today. It is unacceptable that they have failed to enforce the law in this very important matter, and as the chairman pointed out, in the case of the No. 1 tax abuser in our history. Can there be little wonder, can there be little wonder why Americans have lost confidence with respect to this government's ability to enforce the laws? And can there be little wonder why most Americans believe there are two sets of laws in this country, one for the rich, no pun intended, and one for the rest of us?<sup>176</sup>

The Committee reached similar conclusions in its 1992 reports on the Rich matter, stating, for instance, that the U.S. government "lacked the political will to effect the return of these fugitives[.]"<sup>177</sup> The Subcommittee urged "that the Department of Justice rejuvenate its efforts to apprehend the fugitives Marc Rich and Pincus Green and that it become a high profile matter for the U.S. Government." The report continued to admonish, stating, "[t]he continuing failure to return these fugitives to the United States to stand trial before their fellow citizens only furthers the idea 'that there are . . . two standards of justice in the United States . . . one for accused criminals without money and there's one for accused criminals with money.'"<sup>178</sup>

The second report by the Subcommittee, "Coin, Contracting, and Chicanery: Treasury and Justice Departments Fail to Coordinate," focused on the failure of the U.S. government to keep Rich from receiving government contracts after he fled the U.S.<sup>179</sup> The Subcommittee concluded that Rich's Clarendon firm continued to provide the U.S. Mint with metals despite being debarred from government contracting.<sup>180</sup> The Subcommittee also criticized the Justice and Treasury Departments for failing to take any action against Clarendon for over three years because of a series of missteps and miscommunications.<sup>181</sup>

## **5. Actions Taken by the U.S. Against Rich's Business Interests**

After they fled the country, several federal agencies took actions against Rich and Green's businesses. Notwithstanding their indictment and fugitive status, Rich and Green continued to contract with several agencies within the U.S. government. Companies controlled by Rich and Green held contracts with the U.S. Mint as well as the U.S. Department of Agriculture. These contracts continued for several years until they were eventually reviewed by

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<sup>176</sup> "The Strange Case of Marc Rich: Contracting with Tax Fugitives and At Large in the Alps," *Hearing Before the Govt. Information, Justice, and Agriculture Subcommittee of the Comm. on Govt. Operations*, 102d Cong. 7 (Dec. 4, 1991) (statement of the Honorable Mike Synar).

<sup>177</sup> "They Went Thataway: The Strange Case of Marc Rich and Pincus Green," *Hearing Before the Comm. on Govt. Operations*, 102d Cong. 37 (May 27, 1992).

<sup>178</sup> *Id.* at 34.

<sup>179</sup> "Coins, Contracting, and Chicanery: Treasury and Justice Departments Fail to Coordinate," *Hearing Before the Comm. on Govt. Operations*, 102d Cong. (May 27, 1992).

<sup>180</sup> *Id.* at 18.

<sup>181</sup> *Id.* at 19.



Congress and relevant agencies. The Department of the Treasury also was forced to block money destined for Rich and Green because of their companies' dealings with Cuba.

**a. U.S. Mint Contract Cancellation**

In the wake of Rich's indictment, in 1985, one of his companies, Clarendon, Ltd., was debarred from contracting with the federal government by the Defense Logistics Agency. However, the debarment lasted only three years. Soon after that period, in July of 1988, Clarendon, Ltd. began contracting with the U.S. Mint to supply raw metal for producing coins. From 1989 through 1992, Clarendon won numerous contracts to supply the mint with copper, nickel, and zinc.<sup>182</sup>

Clarendon was able to secure the metal contracts because, from mid-1988 on, the company was not listed on the GSA's "Parties Excluded from Procurement Programs" list. This was possible in part because Marc Rich set up the management of the company so that he was not the majority stockholder. By controlling 49 percent of Clarendon's stock, Rich could claim that he did not have control over the company's business decisions. This move, however, was part of a scheme by Marc Rich in which he purchased back the remaining 51 percent of Clarendon through a wholly owned subsidiary of Marc Rich + Co., A.G.<sup>183</sup> By the time Clarendon was reaping the benefits of the new contract with the Mint, Marc Rich was in full control of the company. The contracts were reported to be worth up to \$45.5 million to Marc Rich's company.<sup>184</sup> As discussed above, this prompted congressional hearings and a subsequent report. Congressman Robert Wise of West Virginia, who chaired the hearings, stated to the press, "[e]very time I reach into my pocket for some change, I have to wonder if there's a little bit of Marc Rich in there."<sup>185</sup> This attention by Congress eventually played a part in ending Rich's contracts with the U.S. Mint. In a letter on February 27, 1992, Rich's lawyers announced that, "Clarendon does not intend to participate in bid or contract opportunities with the Mint in the foreseeable future."<sup>186</sup>

**b. Suspension of Rich's Grain Dealings**

Between July of 1986 and September of 1989, one of Marc Rich's companies, Richco Grain Ltd., participated in the Commodity Credit Corporation's Export Enhancement Program. The Department of Agriculture used the program to sell American grain to overseas customers at prices below U.S. market levels. The companies who won the contracts received subsidies from the department in the form of surplus grains. A tally by the Department showed that Richco

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<sup>182</sup> "The Strange Case of Marc Rich: Contracting with Tax Fugitives and At Large in the Alps," *Hearing Before the Gov. Information, Justice, and Agriculture Subcommittee of the Comm. on Govt. Operations*, 102d Cong. 58 (Dec. 4, 1991) (statement of Kenneth Gubin, Chief Counsel, U.S. Mint).

<sup>183</sup> This scheme also led to a civil action against the company. *See U.S. v. Clarendon, Ltd.* (D.D.C. Apr. 12, 1995) (CA 1:95CV00700). The charges were authorized under the signature of Deputy Attorney General Eric Holder.

<sup>184</sup> Rick Wartzman, *Bid to End Pact to Clarendon Comes Amid Disputes Over Marc Rich's Stake*, WALL ST. J., Feb. 28, 1992, at B2a.

<sup>185</sup> *Id.*

<sup>186</sup> Department of Agriculture Document Production (Letter from David P. Langlois, Partner, Milgrim Thomajan & Lee, to Kenneth Gubin, Chief Counsel, U.S. Mint (Feb. 27, 1992)) (Exhibit 24).

received \$95 million worth of such U.S. grain through the program.<sup>187</sup> Rich made money through his sales of grain to China, the Soviet Union, Romania, and Saudi Arabia.

After prompting from Congressman Dan Glickman and an investigation by the Inspector General, the Department of Agriculture suspended Richco Grain Ltd. from participating in the program. A letter written on September 29, 1989, by the Vice-President of the Commodity Credit Corporation listed Rich and Green's fugitivity and indictment as reasons for the suspension.<sup>188</sup> Notwithstanding the suspension, Congressman Glickman continued to press the Bush Administration on the matter. On March 4, 1992, Congressman Glickman wrote to President Bush to ask that the Department of Agriculture permanently exclude Rich and Green from participating in the program by debarring them.<sup>189</sup> The Bush Administration responded by referring Glickman's letter to the Department of Agriculture, requesting that the department "take action, if warranted, to see that no new contracts are awarded to Richco Grain."<sup>190</sup> It appears that no new contracts were awarded to Marc Rich's company.

It is troubling that a member of President Clinton's own cabinet, who, as a Member of Congress was justifiably concerned over Marc Rich's dealings with the Agriculture Department, was apparently not consulted when the White House was considering the pardons. As Secretary of Agriculture, Glickman could have provided insight into the ways in which the fugitive from American justice continued to profit from the very government that had indicted him.

### **c. Cuban Asset Forfeiture**

Marc Rich has also had Department of Treasury actions taken against his companies because of his disregard for U.S. regulations related to the embargo against Cuba. In late 1991, the Compliance Programs Division of the Office of Foreign Assets Control blocked more than \$2.5 million relating to a \$3.9 million deal for Cuban sugar brokered by Marc Rich + Co., Ltd. in the United Kingdom.<sup>191</sup> This transaction had run afoul of the Cuban Assets Control regulations.<sup>192</sup> As R. Richard Newcomb, Director of the Office of Foreign Assets Control explained to Rich attorney Robert Fink in a December 27, 1995, letter, these regulations prohibit transactions by persons subject to U.S. jurisdiction involving any property of Cuba or Cuban

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<sup>187</sup> Bruce Ingersoll, *U.S. Suspends Grain Subsidies for Exporter*, WALL ST. J., Oct. 12, 1989, at sec. 3, p. 19.

<sup>188</sup> Department of Agriculture Document Production (Letter from R.E. Anderson, Jr., Vice President of the Commodity Credit Corporation, Department of Agriculture, to Robert Thomajan, Partner, Milgrim Thomajan & Lee (Sept. 29, 1989)) (Exhibit 25).

<sup>189</sup> Department of Agriculture Document Production (Letter from Dan Glickman, Chairman, Subcommittee on Wheat, Soybeans, and Feed Grains, Committee on Agriculture, to President George H.W. Bush (Mar. 4, 1992)) (Exhibit 26).

<sup>190</sup> Department of Agriculture Document Production (Letter from Allan V. Burman, Administrator of the Office of Federal Procurement Policy, the White House, to Charles R. Hilty, Assistant Secretary for Administration, Department of Agriculture (Apr. 20, 1992)) (Exhibit 27).

<sup>191</sup> Department of Treasury Document Production 000022 (Memorandum from R. Richard Newcomb, Director of the Office of Foreign Assets Control, Department of Treasury, to Peter K. Nunez, Assistant Secretary of Enforcement of the Office of Foreign Assets Control, Department of Treasury) (Exhibit 28).

<sup>192</sup> *Id.* See 31 C.F.R. part 515.

nationals.<sup>193</sup> According to Newcomb, Rich's Cuban sugar deal was clearly contemplated by the regulations and was therefore illegal.<sup>194</sup>

In September of 1994, Marc Rich + Co., A.G. in Switzerland provoked a similar blocking of nearly \$1 million in proceeds from an oil deal with Venezuela going through Cuba. Internal notes of the Compliance Programs Division indicate deep concern with attempts by the Venezuelan state-run oil company to have the funds released. As the Compliance Division wrote in its internal notes, the Venezuelan oil company "also stated that it 'believes' that Marc Rich intended to resell the oil to Cuba, but that this particular transfer did not relate to the sale of the oil to Cuba. If it did not relate to Cuba, why did it reference Cuba?"<sup>195</sup> Ultimately, in February of 1995, the Department of Treasury unblocked the funds because, as it stated in one document, "Cuba does not have a direct interest in the blocked transaction, which involves a Venezuelan and a Swiss company[.]"<sup>196</sup>

It does not appear that the Clinton Administration took into consideration the fact that Marc Rich and Pincus Green profited from the United States while flouting its embargoes. Indeed, a review of Rich and Green's business relationships shows a complete disregard for the welfare of the United States and its citizens. Furthermore, Rich's clever and illegal business schemes meant that U.S. taxpayers' money came out of agencies such as the U.S. Mint and the Department of Agriculture and wound up in the pockets of Rich and Green while they evaded the U.S. legal system, and U.S. income taxation. This is one of the many reasons that Republicans and Democrats alike have been so critical of President Clinton's decision to grant these men a pardon.

## **II. ATTEMPTS TO SETTLE THE MARC RICH AND PINCUS GREEN CASE**

### **A. Attempts to Settle in the 1980s**

While living as fugitives in Switzerland, Marc Rich and Pincus Green attempted to negotiate a settlement with the Southern District of New York. In addition to prominent lawyers such as Edward Bennett Williams, Rich and Green hired other well-known and politically connected lawyers.<sup>197</sup> In the Spring of 1985, they hired President Richard Nixon's attorney Leonard Garment.<sup>198</sup> Around this same time, Garment hired Lewis "Scooter" Libby to join his

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<sup>193</sup> Department of Treasury Document Production (Letter from R. Richard Newcomb, Director of the Office of Foreign Assets Control, Department of Treasury, to Robert F. Fink, Partner, Piper and Marbury (Dec. 27, 1995)) (Exhibit 29).

<sup>194</sup> *Id.*

<sup>195</sup> Department of Treasury Document Production 000635 (Note from Compliance Programs Division, Office of Foreign Assets Control) (Exhibit 1).

<sup>196</sup> Department of Treasury Document Production 000636 (License Request by J. Kerrigan, Compliance Programs Division of the Office of Foreign Assets Control, Department of Treasury (Jan. 1, 1995)) (Exhibit 30).

<sup>197</sup> Marc Rich's practice of hiring attorneys who are close to the parties investigating him has continued to this day. In response to this Committee's investigation, Rich and his attorneys have hired an array of prominent Republicans, including the former personal attorneys to Chairman Burton and the Committee's former Chief Investigator.

<sup>198</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 438 (Mar. 1, 2001) (testimony of Lewis Libby, former counsel for Marc Rich, Dechert Price & Rhoads).

firm.<sup>199</sup> Garment assigned Libby the task of assessing whether or not there were legal defenses to the charges to which Rich and Green's companies had already pled guilty.<sup>200</sup> As Libby testified at the Committee's March 1, 2001, hearing, he worked with Robert Fink and other attorneys in an attempt to demonstrate that Marc Rich's companies "had properly reported their tax obligations and energy transactions and that these criminal charges should be reexamined."<sup>201</sup> Libby and the Rich legal team used their analysis in an effort to negotiate a settlement with the Southern District on the outstanding indictment.<sup>202</sup>

It should be noted that Lewis Libby's involvement in the Rich matter — like that of Garment and former Reagan Justice Department official William Bradford Reynolds — was limited to settlement negotiations and never included work on the pardon matter. Libby, and to a lesser extent, Garment and Reynolds, have been mentioned by President Clinton and others as prominent Republicans who supported the Rich pardon. This representation is inaccurate, as Libby, Reynolds and Garment worked only on settlement negotiations, and did not work on the pardon. Libby's efforts included an attempt to negotiate a settlement with the Southern District of New York in the late 1980s until he left to work at the Pentagon in the first Bush Administration in 1989.<sup>203</sup> When he returned to private practice in 1993, Libby again attempted to achieve a settlement for Rich and Green.<sup>204</sup> This attempt again failed by 1995.<sup>205</sup> Libby's final involvement in the Rich case was in 1999 and early 2000, when he briefed the newly-hired Jack Quinn on the legal team's previous efforts to reach a settlement with the Southern District and helped prepare yet another request to the Southern District.<sup>206</sup> Libby was instructed to cease all work on behalf of Rich and Green in the spring of 2000.<sup>207</sup>

Despite the fact that Rich and Green fled the country as a result of their pending indictment, the Southern District of New York continued to negotiate with lawyers like Fink, Libby and Garment to try to achieve the return of Rich and Green to the United States. In their appeals to President Clinton for a pardon, Rich's lawyers often claimed that the SDNY refused to negotiate with Rich. Nothing could be further from the truth. Despite the fact that Rich and

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<sup>199</sup> *Id.* Libby is currently Chief of Staff to Vice President Dick Cheney.

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> *Id.* On this occasion he also worked with Laurence Urgenson of Kirkland & Ellis.

<sup>205</sup> *Id.*

<sup>206</sup> *Id.* at 438–39.

<sup>207</sup> *Id.* at 439. It appears that Rich's lawyers considered approaching Libby to help with the pardon effort, but were concerned that he would refuse them. On December 26, 2000, Robert Fink sent the following e-mail to Jack Quinn and Michael Green:

Marc thought it made sense to call Scooter to see if he could be helpful, knowing he might not be able to be helpful but that he would never do anything that hurt Marc. I agreed and raised it with Mike Green. Mike is concerned that Scooter would want to help but would feel he had to raise the matter with the ethics committee on the transition and it would get caught up there, and we would effectively be bringing it to the attention of a number of people who might not be helpful.

Piper Marbury Rudnick & Wolfe Document Production PMR&W 00398 (E-mail from Robert Fink, Partner, Piper Marbury Rudnick & Wolfe, to Jack Quinn and Michael Green, Partner, Dickstein Shapiro Morin & Oshinsky (Dec. 26, 2000)) (Exhibit 31).

Green had fled the country, SDNY prosecutors continued to negotiate with Rich, even offering to reduce the charges against Rich and Green in return for their surrender. For example, in the early 1990s, Otto Obermaier, U.S. Attorney for the Southern District of New York, traveled to Switzerland to meet with Rich and Green. This was a highly unusual step for a United States Attorney to make. In fact, Eric Holder testified at a Committee hearing that he could think of no other instance in which a U.S. Attorney had traveled to a foreign country to negotiate with an indicted fugitive.<sup>208</sup> Despite this accommodation, Rich and Green failed to reach an agreement with the Southern District to return to the United States to stand trial.

The SDNY also offered a number of other accommodations if Rich would return to the U.S. to face the charges. For example, prosecutors offered to agree in advance on bail, so that Rich would not have to be incarcerated pending trial.<sup>209</sup> They also offered to have a full meeting with Rich's attorneys, and conduct a complete review of the charges against Rich.<sup>210</sup> Most importantly, they offered to drop the RICO charges against Rich and Green.<sup>211</sup> Marc Rich's own lawyer, Robert Fink, confirmed that prosecutors offered to drop the RICO charge as a result of negotiations.<sup>212</sup> Fink wrote about these negotiations in an e-mail he sent to Avner Azulay on February 10, 2000, stating "I was told at one point that they would drop the RICO charge if we wanted if Marc came in."<sup>213</sup> Fink confirmed the substance of this e-mail at the Committee's hearing:

Mr. LaTourette: Looking at [the February 10, 2000, e-mail], or your recollection from the representation of Marc Rich, is it accurate that at one point you were told that the prosecuting authorities would drop the RICO charge if Marc Rich returned to this country?

Mr. Fink: That was something that was discussed with me in at least one meeting I had with the prosecutors.<sup>214</sup>

Given the fact that the SDNY had offered to drop the RICO charges if Rich and Green returned to the U.S., it is interesting that Quinn continued to cite the RICO charges as one reason the pardon was necessary. Throughout the pardon petition, his contacts with White House officials, and even his attempts to justify the pardon after the fact, Quinn cited the RICO charges as a reason Rich and Green fled the country rather than face trial. However, the SDNY's offer makes it clear that Quinn's RICO argument, like most of his other arguments, was false and misleading.

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<sup>208</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 268–69 (Feb. 8, 2001) (testimony of Eric Holder, former Deputy Attorney General, Department of Justice).

<sup>209</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00697 (E-mail from Robert Fink to Avner Azulay, Director, Rich Foundation (Feb. 10, 2000)) (Exhibit 32).

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 469 (Mar. 1, 2001) (testimony of Robert Fink).

<sup>213</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00697 (E-mail from Robert Fink to Avner Azulay, Director, Rich Foundation (Feb. 10, 2000)) (Exhibit 32).

<sup>214</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 469 (Mar. 1, 2001) (testimony of Robert Fink).

Finally, in addition to the offer to drop the RICO charges, prosecutors also offered another accommodation to Rich and Green. The SDNY indicated it would agree to bail so that Rich and Green would not have to be incarcerated while they stood trial. The only condition of this offer was that they give up their passports.<sup>215</sup> Even after the offers to drop RICO and allow bail was presented to them, the two men still chose to remain fugitives and refused to face the American judicial system.

## **B. Marc Rich's Humanitarian Activities in the 1980s and 1990s**

After he fled the United States, Marc Rich began to contribute large sums of money to various humanitarian activities, mainly in Israel and to Jewish communities in Europe and the United States. Marc Rich's contributions, beyond achieving their humanitarian purposes, also served a useful purpose of making Rich a well-known and respected figure in Israeli and Jewish political circles. These contacts would prove useful both in Rich's unsuccessful attempt to settle his indictment and in his successful campaign to win a pardon.

Rich also used his wealth to cultivate political contacts. In 1985, after an Egyptian policeman shot and killed a number of Israeli tourists at Ras Burka, Rich contributed \$400,000 to a compensation fund which was established for the victims.<sup>216</sup> More recently, in 1995, Rich began to make offers of providing substantial sums of money to help the Israeli-Palestinian peace process.<sup>217</sup> According to internal Marc Rich legal documents, Rich offered to help fund the economic development of Palestinian territories as part of the peace process.<sup>218</sup> As part of his offer, Rich apparently told Israeli officials that his ability to help was limited by his outstanding U.S. indictment. Receptive Israeli officials then went to U.S. officials to see what could be done to settle Rich's case. According to an account of the negotiations prepared by Rich's lawyers, the Israeli government approached the Justice Department to discuss the Rich case.<sup>219</sup> Mark Richard, a Deputy Assistant Attorney General in the Criminal Division, informed the Israelis that while the Justice Department could not act directly on the Israeli request, the Justice Department would "give serious consideration to a statement by the State Department or the White House that the United States had an interest in allowing Israel to obtain the active participation of Rich in a Middle East Initiative."<sup>220</sup>

Following Mark Richard's suggestion, the Israeli Foreign Ministry took the Rich case to the State Department. In July 1995, Uri Savir, the Director General of the Foreign Ministry, presented Ambassador Dennis Ross with a briefing paper on the Rich case.<sup>221</sup> Several months later, Ross informed Savir that the Rich case was a "hot potato" and should not be pursued.<sup>222</sup>

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<sup>215</sup> *Id.* at 470.

<sup>216</sup> Petition for Pardon for Marc Rich and Pincus Green 8 (Dec. 11, 2000) (Appendix III); LEONARD GARMENT, CRAZY RHYTHM 375 (1997).

<sup>217</sup> *Id.* at 9; Jack Quinn Document Production (Background Memorandum to the Marc Rich Case, Dec. 1997) at 5 (Exhibit 33).

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> *Id.* at 5–6.

<sup>222</sup> *Id.* at 6.

Despite Ross' rebuff, then-Foreign Minister Shimon Peres instructed the Israeli Ambassador to the U.S., Itamar Rabinovich, to press the Rich matter with the State Department.<sup>223</sup> Peres himself also raised the Rich case with Ross and the U.S. Ambassador to Israel, Martin Indyk.<sup>224</sup> While Ross did not respond to Peres, Indyk suggested that the Rich case could be discussed at greater length by Israeli officials and the State Department.<sup>225</sup> Ambassador Rabinovich and his staff met with a State Department official in October 1995 and discussed the Rich case.<sup>226</sup> In follow-up meetings with the State Department, Israeli officials learned that they were not likely to win support from the State Department for settling the Rich case.<sup>227</sup> According to the Israeli officials, State Department officials were concerned about allegations that the Administration was interfering with law enforcement for political purposes, and the potential embarrassment that would follow if the public learned of a deal with Marc Rich.<sup>228</sup>

According to the internal account prepared by the Marc Rich lawyers, Shimon Peres continued his efforts on behalf of Marc Rich even after Yitzhak Rabin was assassinated and Peres became Prime Minister.<sup>229</sup> However, by 1996, as Israeli elections approached, Peres' priorities shifted, and Israeli contacts with the U.S. government on the Rich matter subsided until the pardon effort.

Other than the initial response from Mark Richard, it appears that Justice Department and State Department officials were unified in their resistance to Israeli efforts to have the Rich case settled. The resistance of these government officials should be contrasted with the receptivity displayed by President Clinton and Deputy Attorney General Holder for the much more drastic step of pardoning Rich. Also noteworthy is the fact that this brief effort in 1995 appears to be the only time that Marc Rich's name came up in the context of the Middle East peace talks. To the extent that Rich's name came up, it appears to have been a minor matter that never had any impact on the Middle East peace talks. Dennis Ross, the Clinton Administration's Middle East envoy, has stated that Marc Rich "was not a factor in the Middle East talks."<sup>230</sup> The fact that Marc Rich was never a factor in the peace talks, either in 1995 or in 2000, suggests that President Clinton's key justification for the pardon — that it was important to Israel — is an after-the-fact excuse that the President has put forward to cover up other motivations for the pardon.

### **C. Rich Hires Jack Quinn**

After several years of failed negotiations with the Southern District of New York, Marc Rich and his team tried another approach to resolve his case. Instead of dealing only with the federal prosecutors from New York, Rich began a process of going directly to the Justice Department in Washington. Beginning sometime in 1997, Michael Steinhardt, a prominent

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<sup>223</sup> *Id.* Itamar Rabinovich, now President of Tel Aviv University, wrote a letter of support for the Rich pardon to President Clinton.

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> *Id.* at 7.

<sup>230</sup> James Risen and Alison Leigh Cowan, *U.S. Diplomats Turned Aside Israeli Push on Rich's Behalf*, N.Y. TIMES, Feb. 17, 2001, at A1.

hedge-fund investor and friend of Rich, recommended that Rich hire public relations consultant Gershon Kekst to help with his case.<sup>231</sup> Although Kekst was at first reluctant to get involved, he eventually began working with Rich to help resolve his legal troubles in the United States.<sup>232</sup> It was through Kekst's efforts that Jack Quinn was hired to work on the Marc Rich case.

Kekst explained that in late 1998, he attended a dinner celebrating the merger of Daimler Benz and Chrysler.<sup>233</sup> At the dinner, he was seated next to an individual he did not know, who explained that he worked at "Main Justice."<sup>234</sup> It turned out that this individual was Deputy Attorney General Eric Holder.<sup>235</sup> Kekst asked this stranger to whom U.S. Attorneys are accountable.<sup>236</sup> Holder explained that they answer to Main Justice.<sup>237</sup> Kekst had Marc Rich in mind, but did not mention Rich's name at the time.<sup>238</sup> Kekst then asked Holder what someone should do if "they were improperly indicted by an overzealous prosecutor."<sup>239</sup> Holder told Kekst that a person in that situation should try to work it out and resolve it.<sup>240</sup> Holder further stated that, "lawyers know there is a path back to DOJ, to me."<sup>241</sup> Holder told Kekst that such a person should "hire a lawyer who knows the process, he comes to me, and we work it out."<sup>242</sup> Kekst asked who such a lawyer would be, and Holder pointed to an individual sitting at a nearby table and said, "there's Jack Quinn. He's a perfect example."<sup>243</sup> According to Kekst, Quinn was in attendance, but he did not discuss Marc Rich or Eric Holder with Quinn at that dinner.<sup>244</sup>

Shortly after the Daimler Chrysler dinner, Kekst began to explore this new strategy. First, he worked to gather names of lawyers in addition to Jack Quinn who might be able to help Marc Rich.<sup>245</sup> By the time he met with Michael Steinhardt and Robert Fink to discuss the Rich case several weeks later, Kekst recommended that Rich hire a senior Washington lawyer who could intercede with the Justice Department in Washington.<sup>246</sup> Kekst then provided the names of three such lawyers who might be able to help: Warren Christopher, Judah Best, and Jack Quinn.<sup>247</sup> Kekst called each of the three to introduce them to Fink.<sup>248</sup> According to Kekst,

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<sup>231</sup> Telephone Interview with Michael Steinhardt (Mar. 12, 2001).

<sup>232</sup> As discussed in Section IV(A)(9) of the report, Kekst tried to disavow his role in helping Marc Rich with negotiations and the pardon effort. It appears, however, that Kekst was deeply involved in the pardon effort.

<sup>233</sup> Interview with Gershon Kekst, President, Kekst and Co. (Mar. 15, 2001). To the best of Kekst's recollection, the Daimler Chrysler dinner took place in November of 1998.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

<sup>248</sup> *Id.* At the Committee's March 1, 2001, hearing, Fink testified that he asked Kekst to "recommend someone who [he] called the white-haired man." Fink testified that this expression referred to "someone who understood the entire political process." "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 471 (Mar. 1, 2001) (testimony of Robert Fink).



Warren Christopher said that taking the job would be inappropriate since he had just come out of government.<sup>249</sup> Fink interviewed Best but did not like him enough to hire him for the job. Rich, Fink, and Kekst eventually settled on Jack Quinn. As Quinn explained to *The New York Times*, he traveled to Switzerland, studied the issues, and met with Marc Rich “not for hours, but for days.”<sup>250</sup>

Jack Quinn began working for Marc Rich in the spring of 1999.<sup>251</sup> According to Quinn, he was hired at first, “not to go to the White House, but to work with Main Justice and the Southern District of New York.”<sup>252</sup> It is noteworthy that Eric Holder’s recommendation to Gershon Kekst was the impetus for Marc Rich’s hiring of Jack Quinn. Quinn had a warm relationship with Holder — Holder even solicited Quinn for support to have Holder nominated as Attorney General. This warm relationship appears to have had a significant role in Holder’s support for the Rich pardon.

#### **D. Quinn’s Fee Arrangements**

Jack Quinn was a partner with the law firm of Arnold & Porter when he began working for Marc Rich. Quinn also worked on the Rich matter with Kathleen Behan, another Arnold & Porter partner. As Behan explained to Committee staff, although they were not officially retained by Marc Rich until July of 1999, from February until July, Quinn and Behan were “engaged in a series of familiarization and preparatory efforts” to learn about the case “in preparation for possible retention on the matter.”<sup>253</sup> Quinn and Behan were officially retained after they met with Marc Rich in Zug, Switzerland, in May of 1999 to discuss the representation.<sup>254</sup> As the engagement letter explains, Quinn and Behan were hired for a minimum rate of \$55,000 per month for six months, totaling \$330,000, with an option to reconsider if their billable hours were to “substantially exceed” \$55,000 per month.<sup>255</sup>

##### **1. Was Quinn Expecting Payment for His Work on the Pardon?**

In November 1999, just several months after he was hired by Rich, Quinn left Arnold & Porter to form the lobbying firm of Quinn and Gillespie.<sup>256</sup> While Quinn brought Rich as a client

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<sup>249</sup> Interview with Gershon Kekst, President, Kekst and Co. (Mar. 15, 2001).

<sup>250</sup> Alison Leigh Cowan and Raymond Bonner, *LAWYER TELLS OF HIS PURSUIT OF PARDON FOR HIS CLIENT, AND CONVERSATION WITH CLINTON*, N.Y. TIMES, Jan. 25, 2001, at A21.

<sup>251</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 216 (Feb. 8, 2001) (testimony of Jack Quinn).

<sup>252</sup> *Id.*

<sup>253</sup> Interview with Kathleen Behan, Partner, Arnold & Porter (Feb. 27, 2001).

<sup>254</sup> *Id.*

<sup>255</sup> Arnold & Porter Document Production A0507–10 (Letter from Kathleen Behan, Partner, Arnold & Porter, to Marc Rich (July 21, 1999)) (Exhibit 34).

<sup>256</sup> According to one magazine article about his departure from Arnold & Porter, Quinn brought \$4.5 million in business to Arnold & Porter. The article continued:

But that’s small potatoes to what he can make on his own, because now Quinn is not constrained by the hourly rate structure and will take equity stakes in start-up companies in exchange for his services. That will give him the possibility of making millions on one client when it goes public. Arnold & Porter, like almost all corporate firms, does not allow equity participation with clients.

to the new firm, he did not sign a new retainer with Rich. Quinn continued to work for Rich at Quinn and Gillespie, both on negotiations with the Justice Department, and on lobbying for the pardon. However, Quinn has taken the incredible position that he did not expect to be paid for any of his work on the Rich case after he left Arnold & Porter. In the first days of the uproar regarding the pardon, Quinn told *The New York Times*, “I have no understanding with Marc Rich about future payments. If Marc Rich sent me a box of Godiva chocolates tomorrow, it would be more than he is obligated to do.”<sup>257</sup> He expanded on this position at a Committee hearing:

Chairman Burton: You left [Arnold & Porter], and I guess the contract stayed with them; is that right? What happened? They went on just to a fee-for-service with that law firm?

Mr. Quinn: Yes, sir.

Chairman Burton: And you have said that you didn’t receive any fees from Mr. Rich. You said something about a box of chocolates. It was all going to be voluntary if you got that. That just seems very unusual to me. Don’t most attorneys have some kind of a contractual agreement when they leave a law firm with a new client?

Mr. Quinn: Yeah. Let me try to explain this to you. The fees you just reported were received by Arnold and Porter. And, of course, as a partner, and because I had a contractual relationship with a firm, I benefited to some extent from those fees. To another extent, the fees went to other partners of the firm.

After leaving Arnold and Porter, I did consider and discuss with Mr. Fink whether we should have a new arrangement. I came to the conclusion that, particularly because of the fact that we were unsuccessful in achieving a resolution of this at the Southern District, and because I didn’t think, frankly, there would be that much more additional time in it, and because I believed that the earlier payments had been fair and reasonable, that I would see this through to the end simply on the basis of the fees we had been paid earlier.

Chairman Burton: So you received nothing further from Mr. Rich?

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Kim Eisler, *Old Political Opponents Join Forces for Lucrative Lobbying*, WASHINGTONIAN, Feb. 2000, at 12.

<sup>257</sup> Raymond Bonner and Alison Leigh Cowan, *Notes Show Justice Official Knew of Pardon Application*, N.Y. TIMES, Feb. 2, 2001, at A14.

Mr. Quinn: I have not received any further fees from him on this pardon matter.

Chairman Burton: Have you received any fees from him for anything?

Mr. Quinn: No, sir.

Chairman Burton: You've received no fees from Marc Rich or his — how about any of his companies or friends or associates?

Mr. Quinn: No, sir.

Chairman Burton: All that was received was from the — to the law firm that you previously worked with?

Mr. Quinn: Right.

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Mr. Burton: Do you have any kind of understanding where he is going to give you a lump sum of money or funds down the road for the services you've rendered?

Mr. Quinn: No sir[.]<sup>258</sup>

It is impossible to believe that Jack Quinn did his work on the Rich pardon out of the goodness of his heart, on a pro bono basis. Quinn apparently spent hundreds of hours<sup>259</sup> on the Rich matter, calling and e-mailing his colleagues on the Rich legal team in the middle of the night, on vacation, on Christmas Day, and New Year's Eve.<sup>260</sup> While Quinn's dedication to his client was admirable, it suggests that Quinn anticipated some satisfaction beyond seeing Marc Rich and Pincus Green pardoned.

In addition to the common sense rejection of Quinn proceeding on a pro bono basis, e-mails between Jack Quinn, Robert Fink, and Marc Rich indicate that Rich was specifically

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<sup>258</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 242 (Feb. 8, 2001) (testimony of Jack Quinn).

<sup>259</sup> In media accounts Quinn claimed that he spent 60–100 hours on the Rich pardon. These claims simply are not credible. Kitty Behan, who was considerably less involved in the Rich pardon than Quinn spent 126 hours on the Rich pardon. Arnold & Porter Document Production A0513–15, A1128 (Arnold & Porter billing records for Marc Rich (Jan. 16, 2001 and Feb. 23, 2001)) (Exhibit 35). It is likely that Quinn was underestimating his hours to the media to try to support his claims that he was not expecting to be paid.

<sup>260</sup> See Arnold & Porter Document Production A0844 (E-mail from Jack Quinn to Avner Azulay, Director, Rich Foundation *et al.* (Dec. 25, 2000)); Arnold & Porter Document Production A0850 (E-mail from Jack Quinn to Avner Azulay, Director, Rich Foundation *et al.* (Dec. 27, 2000)); Arnold & Porter Document Production A0861 (E-mail from Robert Fink to Avner Azulay, Director, Rich Foundation *et al.* (Jan. 2, 2001)); Piper Marbury Rudnick & Wolfe Document Production PMR&W 00091 (E-mail from Robert Fink to Avner Azulay, Director, Rich Foundation, and Marc Rich (Dec. 28, 2000)); Piper Marbury Rudnick & Wolfe Document Production PMR&W 00097–98 (E-mail from Jack Quinn to Robert Fink (Dec. 31, 2000)) (Exhibit 36).

contemplating entering into a large-dollar retainer agreement with Quinn after Quinn left Arnold & Porter. These documents were withheld from the Committee for over a year on the basis of a claim of attorney-client privilege which was rejected by federal Judge Denny Chin. Once provided to the Committee, the documents seriously undermined Quinn's claims that he never expected any payment from Rich. On February 3, 2000, the day after the Southern District of New York rejected Quinn's request for a meeting to discuss the Rich case, Quinn asked Fink about his status with Marc Rich, asking "not that I'm concerned, but did marc decide to renew the retainer? I've not heard anything."<sup>261</sup> Two weeks later, Fink addressed Quinn's status in an e-mail to Marc Rich, suggesting that Quinn could still be useful, despite his failure to date:

Separately, I have been thinking about your reaction to Jack. When we meet [sic], he felt (and made it clear that he believed this, but was not sure) that he could convince Eric that it made sense to listen to the professors and that he could convince Eric to encourage Mary Jo to do the same. In this he was correct. Moreover, in the preparation process, it became clear that Jack was not just a pretty face but had thoughtful ideas and questions and was not simply relying on his past contacts to make this happen. So, I would not give up on him, at least not yet, as he is still a knowledgeable guy who has a clear understanding of relationships and what may be doable. While we may get more than that, we should not have enlarged expectations.<sup>262</sup>

On February 29, 2000, Fink sent another message to Rich suggesting that he enter into a retainer agreement with Quinn while their negotiations with the Justice Department were still pending:

All in all, while he has been very busy and sometime hard to get to, he has not separated himself from the matter and has fully participated. He has not pushed me for the retainer, though, and realizes that he does not have an agreement with you. I think it makes sense to compensate him for what he has done and may continue to do. Just give it some more thought and we can come back to it soon. We can wait, if you want, to see what Eric says, although it may pay to respond now, before Eric response [sic] to the last message from Jack, so it does not look like you were only willing to pay because of a positive response, as that was not the agreement. Even if we stop everything we are doing, and decide not to investigate the pardon, etc., at this time, we should fold this down in a friendly way.<sup>263</sup>

After the effort to settle the criminal case with the Justice Department failed, Fink continued to recommend that Rich enter into a retainer agreement with Quinn, who was continuing to raise the issue. On June 6, 2000, Fink sent the following e-mail to Rich:

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<sup>261</sup> Jack Quinn Document Production JQ 02847 (E-mail from Jack Quinn to Robert Fink (Feb. 3, 2000)) (Exhibit 37).

<sup>262</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00720-21 (E-mail from Robert Fink to Marc Rich (Feb. 17, 2000)) (Exhibit 38).

<sup>263</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00722 (E-mail from Robert Fink to Marc Rich (Feb. 29, 2000)) (Exhibit 39).

Jack raised the question of his status. I told him that I felt that you would feel that he had been compensated for the past, even though the retainer had run out before he stopped work, but that you would not want or expect him to work without compensation going forward — indeed, you appreciated that it was important to compensate people who asked you to perform for you; although I thought you would not want to get involved in another one of those six month retainers.

Jack said he did not want to make a proposal that you might find objectionable, but felt some clear arrangement for the future was appropriate. I told him I hoped to see you soon, and that I would raise it with you when I see you and come back with a suggestion. He was happy with that and we agreed to catch up with each other on this issue in the beginning of July.<sup>264</sup>

At the beginning of July 2000, Fink e-mailed the figures for a proposed retainer agreement to Marc Rich:

Here is my proposal on Jack Quinn, consistent with your advice to me.

Jack originally proposed a \$50,000 per month retainer and additional hourly charges for Kitty Behan. We settled at \$55,000 per month, including Kitty, which was a better deal because at her hourly rate her billings would have averaged over \$10,000 per month. Moreover, we continued to consult with Jack (and Kitty) after the retainer period had ended so that the average blended rate for Jack was well below \$45,000. (OK, enough with making you feel better.)

At the moment the issue raised by you and Michael is how to keep Jack on a “retainer” so that he is available for questions that might arise and, more importantly, available in the Fall, if we want him to be. Since the Fall is not far away, and you will know whether you want him to gear up again within four months or so, I suggest that we offer Jack \$10,000 per month as a retainer to keep his eyes, ears and brain open to events and thoughts that may be helpful, with the understanding that if a decision is made to proceed that we will renegotiate the monthly retainer to reflect the changed circumstances.

This arrangement could start mid-July or August 1st. He has not pushed me for this and, indeed, we are the ones who raised the idea of keeping him on a retainer. Still, if we do go back to Jack and offer a package, we should not schedule it to begin weeks after the proposal. So, if I were to call him next week, I would want to suggest a July 15th start date.<sup>265</sup>

Despite the clear and detailed indications that Rich and Quinn were negotiating a lucrative retainer agreement, Quinn testified that he never received any money from Marc Rich between

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<sup>264</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00731 (E-mail from Robert Fink to Marc Rich (June 6, 2000)) (Exhibit 40).

<sup>265</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00732 (E-mail from Robert Fink to Marc Rich (July 7, 2000)) (Exhibit 41).

the time that he left Arnold & Porter and the time that the pardon was granted. The Committee requested interviews with Jack Quinn and Robert Fink so that they could provide further explanation regarding these e-mails. Both refused to participate in an interview.

## **2. Has Quinn Received Payments from Marc Rich Since the Pardon Was Granted?**

Because he spent so much time and effort on the Marc Rich pardon effort, and was successful, many believe that Quinn may have expected some large payment from Rich after the pardon was granted. Quinn has always denied these allegations. However, among the documents withheld by Quinn, and which were forced out by the decision of Judge Denny Chin in December 2001, were documents which undermined Quinn's denials. Shortly after the pardon was granted, Quinn was asked by a reporter if he received a fee for his work on the Rich matter. Rather than just saying "no," it appears that Quinn did not know what to say. On January 23, Quinn told Gershon Kekst that "Debra [sic] Orin wants to know if I received a fee. My instinct is to either not respond or say that I have never, in 25 yrs, thought it proper [sic] to discuss a client fee arrangement or even if there was one. What say you?"<sup>266</sup> Kekst suggested a response that "[t]he privacy of my personal and professional relationships is inviolate and so I would not, as a lifelong practice, discuss such a question. Suffice to say that in this case my motivation was quite simple: an injustice needed to be corrected and I determined to do what I could to help accomplish that."<sup>267</sup> Quinn then fueled further speculation about his fee arrangement when he told the press that he was handling the Rich pardon as a "personal matter," indicating he would not share the profits with his partners at Quinn & Gillespie.<sup>268</sup>

E-mails between Marc Rich and Jack Quinn after January 20, 2001, suggest that Rich was seeking some way to show his thanks to Quinn, perhaps alluding to a payment to Quinn. On January 23, 2001, Rich told Quinn that "As time goes by it's sinking in more and more and I once again want to thank you for all you've done. I still want to thank you personally and properly on a separate occasion when we meet."<sup>269</sup> After Quinn's appearance before the Committee, and on a number of television programs, Rich e-mailed Quinn to congratulate him.<sup>270</sup> Quinn responded with his own thanks, and an assurance that he would continue to fight to point out the flaws in Rich's indictment.<sup>271</sup>

The most conclusive piece of evidence that Quinn fully intended to be paid by Marc Rich for his work on the pardon came from Rich lawyer Robert Fink at the Committee's March 1 hearing. Fink confirmed that Rich fully intended to pay Quinn for his work. Fink's testimony also strongly suggests that Quinn was lying when he stated that he had no expectation of being paid for his work on the pardon:

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<sup>266</sup> Jack Quinn Document Production JQ 02973 (E-mail from Jack Quinn to Gershon Kekst, President, Kekst and Co. (Jan. 23, 2001)) (Exhibit 42).

<sup>267</sup> *Id.*

<sup>268</sup> Alison Leigh Cowan and Raymond Bonner, *Lawyer Tells of His Pursuit of Pardon for His Client, and Conversation With Clinton*, N.Y. TIMES, Jan. 25, 2001, at A21.

<sup>269</sup> Jack Quinn Document Production JQ 02924 (E-mail from Marc Rich to Jack Quinn (Jan. 23, 2001)) (Exhibit 43).

<sup>270</sup> Jack Quinn Document Production JQ 02916 (E-mail from Marc Rich to Jack Quinn (Feb. 9, 2001)) (Exhibit 44).

<sup>271</sup> Jack Quinn Document Production JQ 02930 (E-mail from Jack Quinn to Marc Rich (Feb. 9, 2001)) (Exhibit 45).

Counsel: When Mr. Quinn began pursuing the pardon, the prospect of a pardon, did you anticipate compensating him for that work?

Mr. Fink: I anticipated that he would be compensated for that work by Mr. Rich.

Counsel: And if you could, tell us what you were thinking.

Mr. Fink: Actually, I — I don't know that I was thinking anything other than he was entitled to some fair fee, the exact parameters of which I did not have in mind. I believe I told Mr. Quinn when we started to discuss the pardon that we would find a fair fee arrangement for him consistent with whatever his fee arrangements were. I did not know how he was handling his fee arrangements.

Counsel: Did you discuss with Mr. Rich compensating Mr. Quinn?

Mr. Fink: Could you excuse me just one moment?

Counsel: Certainly.

[Mr. Fink confers with counsel.]

Mr. Fink: The answer is yes, I did. I communicated thoughts I had to Mr. Rich, with which he did not disagree.

Counsel: And what did you communicate to him?

Mr. Fink: I actually communicated to him what I told to Mr. Quinn.

Counsel: And what was that?

Mr. Fink: That we would come to a fair fee arrangement that was consistent with his normal fee arrangements.

Counsel: So you had communicated to Mr. Quinn that you would come to an arrangement with him to compensate him?

Mr. Fink: Yes.

Counsel: And when was that?

Mr. Fink: The precise date I do not know, but it was most likely early November 2000.

Counsel: And when did you stop thinking that was going to be the case?

Mr. Fink: I stopped thinking that was going to be the case during the first hearings of this committee.

Counsel: When I was asking Mr. Quinn about his compensation?

Mr. Fink: I believe you were the questioner.

Counsel: I'm not quite sure where to go after that. But you had not had a conversation with Mr. Quinn during which you had discussed the prospect of him not being compensated up until at least the time of our last hearing; is that correct?

Mr. Fink: It was always my contemplation, I mean, not that I reflected on this frequently, but if you had stopped me at any point in time and said would you expect that Mr. Quinn would be compensated for this work, I would have thought that he would be.<sup>272</sup>

Fink's testimony, in addition to the circumstantial evidence, establishes that Quinn expected to receive payment for his work on the Rich pardon. It is likely that Quinn attempted to mislead the public and the Committee on this point to try to improve the public perception of his actions in this case. That is, if Quinn could say he did all of his work on the Rich pardon out of his belief in the merits, rather than his belief in a large payday, it would show the strength of the Rich case.

Knowing now that Quinn did do his work on the Rich pardon with an expectation of payment, the question is — how large of a payment would Quinn receive? Fink loosely characterized it as “consistent with his normal fee arrangements.” However, given the enormous sums at Rich's disposal, and the vast amounts Rich had spent, unsuccessfully, to resolve his case, it is not unreasonable that Rich would pay Quinn a large sum of money. However, at the Committee's February 8, 2001, hearing, Quinn pledged not to accept any future payment on the Rich case:

Counsel: Mr. Quinn, the Chair asked you some questions about compensation. Apart from your attorney's fees, will you accept any money from Mr. Rich in the future?

Mr. Quinn: Well, look, I don't think it would be fair to ask me to commit never to accept moneys from him. As I've said to you, if I do work that justifies my billing him for it, I will do so. I expect to be reimbursed for the expenses I'm put to in connection with this. Those are the only moneys I anticipate receiving from him.

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<sup>272</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 505–06 (Mar. 1, 2001) (testimony of Robert Fink).



Counsel: But as far as your work done in pursuit of obtaining a pardon for him, you do not anticipate him — you're not going to ask him to pay you any money?

Mr. Quinn: That's correct.

Counsel: You're not going to accept any money if he did offer it to you; is that correct?

Mr. Quinn: I only anticipate receiving from him moneys in connection with work I may do.

Counsel: My question was, will you accept any money if he offers it to you for the work you did in obtaining the pardon?

Mr. Quinn: I have no idea what he might offer. It's a hypothetical question. I don't think I should be required to say —

Counsel: It's not a hypothetical question. It's a very clear question. If Mr. Rich offers to pay you money in the future for work you did in pursuit of obtaining his pardon, will you accept it or will you not accept it?

Mr. Quinn: I will not bill him, and I will not accept any further compensation for work done on the pardon.<sup>273</sup>

However, in February 2002, as a result of Judge Chin's decision in the Southern District of New York, the Committee received a number of documents which had been earlier withheld from the Committee on the basis of attorney-client privilege. One of the e-mails provided to the Committee indicated that on March 5, 2001, after the Committee's second and final hearing on the Marc Rich pardon, Quinn asked Rich to enter into a new retainer agreement to pay Quinn. Quinn's e-mail reads as follows:

Greetings. Quite a month we have had! If you are agreeable, and I hope you are, I need to fax to you in the next few days a new retainer agreement. I cannot, under the D.C. Bar rules continue to work without a written agreement, and I have been crafting one which I will forward shortly. I hope that, in recent days, the public has begun to see your pardon in a different light. I particularly thought that our hearing last Thursday brought to the fore aspects not previously appreciated. About all this I hope we shall speak soon. Best to you.<sup>274</sup>

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<sup>273</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 266 (Feb. 8, 2001) (testimony of Jack Quinn).

<sup>274</sup> Jack Quinn Document Production JQ 02916 (E-mail from Jack Quinn to Marc Rich (Mar. 5, 2001) (Exhibit 44)).

Rich responded to Quinn by telling him: “[w]ith reference to your email of March 5, please go ahead and send me the new retainer agreement.”<sup>275</sup> Neither Quinn nor Robert Fink provided the Committee with a copy of any retainer agreement, or any further e-mails regarding payments from Rich to Quinn after March 5, 2001. However, the March 5 e-mail raises the possibility that Quinn is receiving payment from Rich, despite his express promise to the contrary at the Committee’s February 8 hearing. The Committee requested an interview with both Quinn and Fink to provide further explanation for these e-mail messages, but both declined to participate. While Quinn has refused to provide an explanation to the Committee, his spokesman has told the press that Quinn has signed a new retainer with Rich to “cover new legal matters.”<sup>276</sup> The Committee will continue to investigate this matter to determine the nature of Quinn’s work for Rich and the amounts that Quinn is being paid.

## **E. Quinn’s Attempts to Settle the Case**

In October 1999, Quinn followed the advice offered by Eric Holder to Gershon Kekst and approached Main Justice in an effort to settle the Rich case. He started by drafting a presentation for the Justice Department. Quinn also hired Neal Katyal, a lawyer who interned for Quinn when he was Counsel to Vice President Gore.<sup>277</sup> Katyal had also worked as National Security Advisor to Deputy Attorney General Eric Holder. According to Katyal, he was hired more as a consultant than as a lawyer.<sup>278</sup> Katyal characterized the presentation he helped prepare as more marketing than legal.<sup>279</sup> Katyal helped draft documents that were presented to Eric Holder. He denied contacting Holder directly, or using his access to Holder to benefit the Rich lawyers. However, he did acknowledge that on several occasions Jack Quinn told him, “you know, I want to talk to Eric about this.”<sup>280</sup>

Quinn had a number of contacts with Holder about settling the Rich case. It appears that Quinn’s main request to Holder was that he intercede with the Southern District of New York and have the Southern District’s prosecutors meet with the members of the Marc Rich legal team. On October 22, 1999, Quinn met with Holder for the first time regarding the Rich case. Quinn reviewed a number of points about the Rich case with Holder, and asked that Holder intervene with the Southern District of New York, to encourage the Southern District to meet with Marc Rich’s lawyers and reach a settlement of the criminal case.<sup>281</sup> On November 8, 1999, Holder called Quinn and told him that he and other senior staff at the Justice Department believed that the refusal of the Southern District to meet with Rich’s lawyers was “ridiculous.”<sup>282</sup> Holder recommended that Quinn send a letter requesting a meeting to U.S. Attorney Mary Jo White, with copies to Holder and Assistant Attorneys General James Robinson and Loretta Collins Argrett.<sup>283</sup> Holder told Quinn that once he got the letter, he would call White and

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<sup>275</sup> Jack Quinn Document Production JQ 02974 (E-mail from Marc Rich to Jack Quinn (Mar. 6, 2001)) (Exhibit 46).

<sup>276</sup> Michael Isikoff, *Secret E-Mail*, NEWSWEEK (Mar. 10, 2002).

<sup>277</sup> Telephone Interview with Neal Katyal, Associate Professor, Georgetown University Law Center (Mar. 26, 2001).

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*

<sup>280</sup> *Id.* Katyal further explained that Quinn already had an independent relationship with Holder and would not have needed Katyal’s assistance in setting up any meetings between them.

<sup>281</sup> Jack Quinn Document Production (Note of Jack Quinn) (Exhibit 47).

<sup>282</sup> Jack Quinn Document Production (Note of Jack Quinn (Nov. 8, 1999)) (Exhibit 48).

<sup>283</sup> *Id.*

suggest that she should meet with Quinn.<sup>284</sup> Holder also told Quinn that he was assigning one of his top deputies, David Margolis, to look at the Rich matter.<sup>285</sup>

After Holder spoke with Mary Jo White about a meeting with Quinn and members of the Rich legal team, Quinn made a direct appeal to Mary Jo White, writing her on December 1, 1999:

We would like to begin by asking that you or your representative, along with representatives of the Tax and Criminal Divisions of the Department of Justice, meet with Professors Wolfman and Ginsburg, and members of our legal team, to personally evaluate their conclusions. We urge this approach because the tax allegations underlie so much of the indictment, and because the merits of our tax position can be quickly evaluated. We believe that such a meeting will advance a resolution of this matter. We further believe that we can persuade you that neither the law nor the policies of the Department of Justice support the RICO charges and that, in this regard, too, the indictment as currently drafted should not stand.<sup>286</sup>

On January 18, 2000, Quinn spoke to Holder to see how Mary Jo White had received his letter. Holder told Quinn that he had spoken to White, and that she was reviewing the matter personally. Holder told Quinn that he would “do what he can,”<sup>287</sup> and also provided encouragement to Quinn, telling him that White “didn’t sound like her guard was up.”<sup>288</sup> On February 2, 2000, the Southern District responded to Quinn and Behan’s letter by turning down their request to meet in order to modify the indictment.<sup>289</sup> As Mary Jo White further explained in her letter to Quinn, “I have communicated with representatives of the Deputy Attorney General and Assistant Attorney General, Criminal Division, and with the Acting Assistant Attorney General of the Tax Division. They all concur that this is a matter within the discretion of the United States Attorney for the Southern District of New York.”<sup>290</sup> White’s letter was a complete rejection of the overtures made by Quinn and Holder, and was a significant setback for the Marc Rich legal team. Robert Fink sent an e-mail to Avner Azulay explaining that “[w]e received a negative response to our overture from [Deputy U.S. Attorney] Shira[h Neiman]. She said her office will not negotiate while Marc is away, and that the DoJ agrees. JQ was surprised and disappointed that the DoJ had agreed even though he had not heard from Eric.”<sup>291</sup> Azulay responded that “I am not exactly surprised. I foresaw this answer from the moment I read JQ’s ltr. I hate to say that ‘I told you so.’ I was surprised by JQ’s optimistic report.”<sup>292</sup>

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<sup>284</sup> *Id.*

<sup>285</sup> *Id.*

<sup>286</sup> Jack Quinn Document Production (Letter from Jack Quinn and Kathleen Behan, Partner, Arnold & Porter, to Mary Jo White, U.S. Attorney for the S.D.N.Y., Department of Justice (Dec. 1, 1999)) (Exhibit 49).

<sup>287</sup> Jack Quinn Document Production (Note of Jack Quinn) (Exhibit 50).

<sup>288</sup> *Id.*

<sup>289</sup> Jack Quinn Document Production (Letter from Mary Jo White, U.S. Attorney for the S.D.N.Y., to Jack Quinn and Kathleen Behan, Partner, Arnold & Porter (Feb. 2, 2000)) (Exhibit 51).

<sup>290</sup> *Id.*

<sup>291</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00697 (E-mail from Robert Fink to Avner Azulay, Director, Rich Foundation (Feb. 10, 2001)) (Exhibit 32).

<sup>292</sup> *Id.*

After this rejection, Quinn turned his efforts to Eric Holder, asking him to review the Rich case, despite White's refusal to do so. Robert Fink laid out Quinn's proposed plan of action in a February 17, 2000, e-mail to Marc Rich:

[Jack] agrees (subject to further discussion) with trying to have Eric help us meet with the tax lawyers in Main Justice (and maybe the head of the criminal division) to see if the professors can convince the chief government tax lawyers that this was a bad tax case. He also agrees that such a conclusion would be useful for many purposes including going back to the SDNY. Similarly, he agrees we should make something of the fact that the office was dealing with fugitives (who surrendered this week) in connection with the Russian money laundering case, while insisting that they can't deal with fugitives. Still, he wants to give Eric a short list of what is wrong with the indictment as he agreed to do that. He feels we can do both.<sup>293</sup>

On February 28, 2000, Quinn sent Holder a short memorandum entitled "Why DOJ Should Review the Marc Rich Indictment."<sup>294</sup> In this memorandum, Quinn stated that "[t]he refusal of the SDNY to participate in a discussion of the Marc Rich case is sorely disappointing. That office (and DOJ) should not sit on a defective indictment."<sup>295</sup> Quinn then explained why he believed that the RICO, mail fraud, wire fraud, tax evasion, and energy charges against Rich were faulty.<sup>296</sup> Quinn also claimed that the SDNY had recently negotiated with fugitive Russian money launderers, despite their policy against negotiating with fugitives. Quinn also stated that "[t]he DOJ website lists Marc Rich on its International Fugitive page. This involves USG resources and is a potential embarrassment for DOJ."<sup>297</sup> Quinn did not provide any explanation, though, of why listing Rich as a fugitive would be an embarrassment for DOJ, given the fact that the Justice Department had been trying to extradite or apprehend him for almost 20 years. Holder apparently reviewed Quinn's arguments, but failed to help Quinn. Quinn spoke to Holder on March 14, 2000, and reported back to Fink, Behan, and Kekst:

[W]e spoke briefly today. it started out badly — "we've gone as far as we can go, can't figure out a way around Shira[h Neiman], etc." — but I pushed back hard on the russian money laundering culprits and the uneven treatment of marc. he wants to talk further about that with his people, said he'd call me back tomorrow. it's time to move on the GOI [Government of Israel] front.<sup>298</sup>

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<sup>293</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00701 (E-mail from Robert Fink to Marc Rich (Feb. 17, 2001)) (Exhibit 52).

<sup>294</sup> Jack Quinn Document Production (Memorandum entitled "Why DOJ Should Review the Marc Rich Indictment" (Feb. 28, 2000)) (Exhibit 53).

<sup>295</sup> *Id.*

<sup>296</sup> *Id.*

<sup>297</sup> *Id.*

<sup>298</sup> Jack Quinn Document Production (E-mail from Jack Quinn to Robert Fink (Mar. 14, 2000)) (Exhibit 54).

Quinn's suggestion to "move on the GOI front" was rebuffed by Avner Azulay, who stated that "there is no way the MOJ [Israeli Minister of Justice] is going to initiate a call to EH — a minister calling a second level bureaucrat who has proved to be a weak link." Piper Marbury Rudnick & Wolfe Document Production PMR&W 00728 (E-mail from Avner Azulay, Director, Rich Foundation, to Robert Fink (Mar. 18, 2000)) (Exhibit 55).

Holder did speak to Quinn almost a month later, on March 25, 2000, and told him that “we’re all sympathetic” and that the “equities [are] on your side.”<sup>299</sup> However, Holder apparently informed Quinn that he could not force a meeting on the Rich case.

At the Committee’s February 8, 2001, hearing, Jack Quinn confirmed that Holder was sympathetic to his cause:

I certainly formed the impression that there was, as one of my notes reflect, a view among some senior people in Main Justice that the equities were on our side in some senses.

Again, I’m not trying to overstate this. I’m not trying to say that I believed that senior people at Main Justice thought the indictment was meritless, but I did absolutely believe that Main Justice thought that the Southern District was being unreasonable in being unwilling to talk to us. I thought that there was a more sympathetic audience at Main Justice.<sup>300</sup>

However, Eric Holder attempted to qualify his support of Jack Quinn’s arguments:

With regard to question of equities and whether or not we thought the Southern District was being unreasonable, I think Mr. Quinn was just a little confused. What we were talking about there was them being unreasonable and not having the meeting. The equities were on their side, as Mr. Quinn’s side, with regard to the meeting. No one at Main Justice thought that, with regard to the substance, the equities were on Mr. Quinn’s side.<sup>301</sup>

Even assuming, though, that Holder’s support was limited to his request for a meeting with Mary Jo White, it is still unclear why he thought the “equities were on Quinn’s side,” even with respect to a meeting. The SDNY had a number of meetings and negotiations with Rich’s attorneys, both before and after Rich’s flight from the U.S. The SDNY had made a number of reasonable offers to settle the case, and U.S. Attorney Otto Obermaier and one of his senior aides even met with Rich in Switzerland. Rich’s lawyers, however, took an inflexible position that they would not agree to any plea that required jail time. Given this position, the SDNY decided further negotiations would not be productive. For Holder to characterize the SDNY’s position as “ridiculous,” suggests that Eric Holder supported Quinn’s efforts to settle the Rich case from the beginning.

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<sup>299</sup> Jack Quinn Document Production (Note of Jack Quinn) (Exhibit 56). In this conversation, Holder also answered Quinn’s arguments regarding the SDNY’s negotiations with the fugitive Russian money launderers, pointing out that they, unlike Rich, agreed to cooperate with the government.

<sup>300</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 230 (Feb. 8, 2001) (testimony of Jack Quinn).

<sup>301</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 231 (Feb. 8, 2001) (testimony of Eric Holder, former Deputy Attorney General, Department of Justice).

### III. THE MARC RICH AND PINCUS GREEN PARDON PETITION

#### A. Rich Contemplated a Pardon Early in 2000

Jack Quinn and others on the Marc Rich legal team have maintained that they did not decide to seek pardons for Rich and Green until October 2000.<sup>302</sup> However, there is extensive evidence that Marc Rich and his lawyers were contemplating a pardon as early as February 2000, while they were still attempting to settle Rich's criminal case with the Southern District of New York. It appears that Rich and his legal team viewed the Presidential pardon effort as a fall-back in case they were unable to settle the criminal case. Moreover, it appears that although they were considering petitioning for a pardon as early as February 2000, Rich and his legal team waited until November 2000 to submit their petition.

As discussed previously, on February 2, 2000, Mary Jo White, the U.S. Attorney for the Southern District of New York, rejected Jack Quinn's offer to meet regarding the Marc Rich case. After White's rejection, Jack Quinn turned again to Deputy Attorney General Eric Holder, and asked him to intervene and force a reconsideration of the Marc Rich indictment. By late March 2000, it became clear to Quinn that Holder was sympathetic to Quinn's requests, but would not force the Southern District to meet with Quinn. However, during the time that Quinn was discussing his request for a meeting with Eric Holder, the Marc Rich legal team was already considering a Presidential pardon.

A privilege log submitted to the Committee by Arnold & Porter suggests that attorneys working for Marc Rich had been researching Presidential pardons as early as March 1999.<sup>303</sup> It appears, though that serious consideration of a pardon began in February 2000, while Quinn was still attempting to settle the criminal case through Eric Holder. February 9, 2000, Robert Fink sent an e-mail to Jack Quinn and Kathleen Behan, which referred to the pardon effort cryptically as the "second option:"

I briefed Marc and he is awaiting word on your call. (I have also sent Avner a briefed [sic] email letting him know of the current status.) I also told Marc that I would discuss with you and Kitty your views on the second option (whether there is any reason to consider it, or whether what happened here made it so unlikely that you did not think it worthwhile, as I told him that you would not work on it unless you thought there was some possibility of success). He was curious as to your thinking. I told him I would also check on your thinking on what Avner was doing. but let's see what Eric says.<sup>304</sup>

On February 14, 2000, Fink had a telephone discussion with Quinn regarding the efforts to settle Rich's criminal case in New York. Quinn apparently mentioned the possibility of seeking a

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<sup>302</sup> See, e.g., "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 45 (Feb. 8, 2001) (testimony of Jack Quinn).

<sup>303</sup> Arnold & Porter Document Production (Privilege Log, Mar. 27, 2001) (Exhibit 57). The privilege log notes that a memorandum regarding the pardon power was prepared on March 12, 1999, and withheld from the Committee on the basis of the attorney work product privilege.

<sup>304</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00695 (E-mail from Robert Fink to Jack Quinn and Kathleen Behan, Partner, Arnold & Porter (Feb. 9, 2000)) (Exhibit 58).

Presidential pardon, as Fink's notes of the call state in part, "Pardon — mid to late Nov."<sup>305</sup> Two weeks later, Robert Fink sent another e-mail to Marc Rich explaining Quinn's role in the negotiations with the Justice Department, and his potential role in seeking a Presidential pardon. Fink concluded his e-mail to Rich by suggesting that Rich enter into a retainer agreement with Quinn before they heard back from Eric Holder:

I think it makes sense to compensate him for what he has done and may continue to do. Just give it some more thought and we can come back to it soon. We can wait, if you want, to see what Eric says, although it may pay to respond now, before Eric response [sic] to the last message from Jack, so it does not look like you were only willing to pay because of a positive response, as that was not the agreement. Even if we stop everything we are doing, and decide not to investigate the pardon, etc., at this time, we should fold this down in a friendly way.<sup>306</sup>

On March 18, 2000, Avner Azulay sent Fink an e-mail which again alluded to the possibility of seeking a pardon in November 2000. More importantly, this e-mail also raised the possibility of capitalizing on Denise Rich's relationship with President Clinton:

I had a long talk with JQ and Michael. I explained why there is no way the MOJ [Israeli Minister of Justice] is going to initiate a call to E[ric] H[older] — a minister calling a second level bureaucrat who has proved to be a weak link. We are reverting to the idea discussed with Abe — which is to send D[enise] R[ich] on a "personal" mission to N01. with a well prepared script. IF it works we didn't [sic] lose the present opportunity — until nov — which shall not repeat [sic] itself. If it doesn't — then probably Gershon's course of action [sic] shall be the one left option [sic] to start all over again.<sup>307</sup>

At the March 1, 2001, hearing on the Rich pardon, Jack Quinn and Robert Fink were asked to explain their understanding of this communication. Fink stated that he understood "N01" to mean President Clinton.<sup>308</sup> However, neither of the two attorneys could provide a definitive answer as to whether Denise Rich actually undertook the "'personal' mission" to the President contemplated in the e-mail. For example, Quinn provided the following response:

Now, I'm telling you, I did not speak to the President in the year 2000 about the Marc Rich matter. I was not a recipient of this [e-mail]. I have no reason to believe that anyone asked Denise Rich to speak to him about this matter, and I

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<sup>305</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 01202-03 (Notes of Robert Fink, Feb. 14, 2000) (Exhibit 59).

<sup>306</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00722 (E-mail from Robert Fink to Marc Rich (Feb. 29, 2000)) (Exhibit 39).

<sup>307</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00729 (E-mail from Avner Azulay, Director, Rich Foundation, to Robert Fink (Mar. 18, 2000)) (Exhibit 60).

<sup>308</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 515 (Mar. 1, 2001) (testimony of Robert Fink).

have no reason to believe that she did so. But my firsthand knowledge of this is limited to the facts I'm able to testify to.<sup>309</sup>

When asked what Denise Rich's involvement was around this time, Robert Fink provided an even more lawyerly response: "I have an imperfect memory, so I'll be careful. I believe as I sit here that there was no involvement by Denise Rich in Mr. Rich's problems during that period of time. I have absolutely no recollection that she became involved in any way."<sup>310</sup>

Furthermore, neither attorney could give a definitive answer as to whether this "well prepared script" for Denise Rich related to the pardon, or to negotiations with the Department of Justice. During questioning about the March 18, 2000, e-mail, Quinn testified that it was possible that "every one of us involved in this thought out loud with each other, is there any way to persuade the President to tell Justice, to tell the southern district to do something."<sup>311</sup> Quinn continued, however, stating, "It's also entirely possible that Mr. Azulay, others, myself included, were involved in a conversation where someone said you know we are going to try to pardon one of these days."<sup>312</sup> Robert Fink's testimony, while also not definitive, suggests that the script related to negotiations with the Department of Justice. When asked about the last sentence of Azulay's e-mail that discusses reverting to "Gershon's course of action" if Denise Rich's script were to fail, Fink stated, "I suspect that he's talking about an application for a pardon here."<sup>313</sup> Assuming Fink's supposition is correct, then the script for Denise would have related to Department of Justice negotiations.<sup>314</sup>

In June 2000, Robert Fink had further communications with Marc Rich indicating that they were intentionally waiting until after the November 2000 election to petition for a Presidential pardon:

Jack Quinn and I traded calls until today. He is well and doing well. He has not forgotten you or what we set out to do, but has pretty much concluded that there is nothing to do until we get closer to (or even passed) [sic] the election, or as he put it, the closing days of the current administration.<sup>315</sup>

In July 2000, Fink again e-mailed Rich suggesting that Rich sign a retainer agreement with Quinn so that he would be available to work in the Fall of 2000:

At the moment the issue raised by you and Michael is how to keep Jack on a "retainer" so that he is available for questions that might arise and, more importantly, available in the Fall, if we want him to be. Since the Fall is not far away, and you will know whether you want him to gear up again within four

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<sup>309</sup> *Id.* at 396 (testimony of Jack Quinn).

<sup>310</sup> *Id.* at 515 (testimony of Robert Fink).

<sup>311</sup> *Id.* at 396 (testimony of Jack Quinn).

<sup>312</sup> *Id.*

<sup>313</sup> *Id.* at 516 (testimony of Robert Fink).

<sup>314</sup> This also tends to suggest that while the attorneys were not working on a pardon effort in March of 2000, the idea had already been discussed.

<sup>315</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00731 (E-mail from Robert Fink to Marc Rich (June 6, 2000)) (Exhibit 40).



months or so, I suggest that we offer Jack \$10,000 per month as a retainer to keep his eyes, ears and brain open to events and thoughts that may be helpful, with the understanding that if a decision is made to proceed that we will renegotiate the monthly retainer to reflect the changed circumstances.<sup>316</sup>

This documentary evidence is supported by the information provided by two witnesses who indicate that they were aware of pardon discussions well before the Fall of 2000. Abraham Foxman, the National Director of the Anti-Defamation League, informed the Committee that he recommended that Rich seek a Presidential pardon as early as February 2000. Foxman first met Marc Rich fifteen years ago through mutual friend Max Maxin who was President of B'nai B'rith.<sup>317</sup> According to Foxman, Maxin asked Foxman to meet with Rich "because Rich felt that there may have been anti-Semitism involved in his prosecution."<sup>318</sup> According to Foxman, he met Rich in Europe sometime in late 1998 or early 1999.<sup>319</sup> Foxman told Rich at that meeting that he did not see any evidence to support a charge of anti-Semitism.<sup>320</sup> Later, in February of 2000, Foxman was contacted by Zvi Rafiah, who was then congressional liaison for the Israeli Embassy in Washington.<sup>321</sup> Rafiah suggested that Foxman go to Paris to meet with Avner Azulay, the former Mossad agent who managed Marc Rich's philanthropic organizations.<sup>322</sup> At that meeting in Paris, Foxman allegedly told Azulay that if the attorneys for Rich continued to be unsuccessful in their negotiations with the prosecutors in New York, a pardon might be a "long-shot" possibility to consider.<sup>323</sup> Foxman told Azulay that, to the best of his knowledge, Denise Rich "hated Marc Rich's guts," but that if someone could convince her to speak to the President, "then you have the beginning of a pardon situation."<sup>324</sup> Foxman later learned that, "as it turns out, that is what happened."<sup>325</sup>

Publicist Gershon Kekst claims that he mentioned the possibility of a Presidential pardon to Rich's lawyers as early as 1999. Kekst had been hired by Rich to assist with strategy and public relations relating to his criminal case.<sup>326</sup> In 1999, the same time period in which Kekst was looking for a Washington lawyer to represent Rich, Kekst was giving general thought to the Rich case, including his basic conclusion that a public relations campaign could not help Rich. Seeking to conduct a "sanity check" on his conclusion, Kekst turned to former Attorney General

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<sup>316</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00732 (E-mail from Robert Fink to Marc Rich (July 7, 2000)) (Exhibit 41).

<sup>317</sup> Interview with Abraham Foxman, National Director, Anti-Defamation League (Mar. 19, 2001).

<sup>318</sup> *Id.* Marc Rich has charged on a number of occasions that he was singled out for prosecution because he was Jewish. There is no support for Mr. Rich's assertion. Mr. Rich's decision to play the race card emphasizes the extent to which he has failed to accept responsibility for his crimes. Rather than recognizing the extent of his criminal acts, of which violation of Department of Energy regulations and the Tax Code were among the least, Rich has made baseless accusations against federal prosecutors.

<sup>319</sup> *Id.*

<sup>320</sup> *Id.*

<sup>321</sup> *Id.* According to Foxman, Rafiah is now a lobbyist for "commercial interests." *Id.* Lobbying registration materials from the FEC indicate that Rafiah's main client is Elisra Electronic Systems Ltd., a company that develops and manufactures electronic warfare systems. Lobbying Registration of Zvi Rafiah (visited Feb. 16, 2001) <[http://www.tray.com/cgi-win/bna\\_mach.exe](http://www.tray.com/cgi-win/bna_mach.exe)> (Exhibit 61).

<sup>322</sup> *Id.*

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*

<sup>325</sup> *Id.*

<sup>326</sup> Interview with Gershon Kekst, President, Kekst and Co. (Mar. 15, 2001).

William P. Barr, the Senior Vice President and General Counsel for Verizon Communications. Kekst met Barr through public relations work he did for Verizon Communications.<sup>327</sup> Kekst claimed that he was unaware at that time that Barr had been U.S. Attorney General.<sup>328</sup> However, Kekst was impressed with Barr's legal acumen, and thought that he could offer some insight into the Rich case. Kekst called Barr, and asked him whether he thought that a public relations campaign would be useful in trying to resolve the Rich case.<sup>329</sup> Kekst claims that Barr told him that a public relations campaign was the worst thing he could do. According to Kekst, Barr told Kekst that, assuming the Rich case was a bad case, the most that Rich could do was wait until the end of the Administration and seek a pardon from President Clinton.<sup>330</sup> Kekst stated that before Barr's suggestion, he had never heard any discussion of Rich seeking a Presidential pardon. Kekst also believes that Barr told him that even if the case against Rich was not justified, as long as Mary Jo White was U.S. Attorney and Rudolph Giuliani was Mayor, there was nothing to be done.<sup>331</sup> The latter point appears to have been the main thing taken away from the conversation by Kekst and those on the Rich team who he informed about the conversation with Barr. In December 2000, Robert Fink e-mailed Jack Quinn and reminded him that Kekst had spoken to Barr in 1999, and that Barr believed "it paid to wait for the new administration and the retiring of several of the then-current players."<sup>332</sup> Fink then suggested that they ask Barr to assist with the pardon effort, but apparently, Quinn and Fink decided not to include a prominent Republican in their efforts.<sup>333</sup>

For his part, Barr recalls that he told Kekst that political pressure would be a "waste of time."<sup>334</sup> Barr explained to Kekst that the Justice Department supported the Southern District of New York prosecutors because it was a matter of significant principle for the Department.<sup>335</sup> He also told Kekst that it was inconceivable that any relief was possible as long as Rich remained a fugitive.<sup>336</sup> In short, Barr believed that the White House would never do anything for Rich unless Rich were willing to surrender himself and accept responsibility for what he had done.<sup>337</sup>

In the days immediately following the Rich pardon, Jack Quinn and the other lawyers for Marc Rich emphasized that they did not decide to seek a pardon for Rich until October 2000. What they did not make clear, however, was that they were actively considering a pardon much earlier. They decided to wait until the closing days of the Clinton Administration to apply for the pardon. While the reasons for the delay are not clear, there are two likely reasons: first, by waiting until December to apply, opponents of the pardon would have a limited amount of time to learn of and resist the pardon effort; second, the Clinton White House would have limited time to conduct a detailed review of the petition and learn of its numerous flaws.

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<sup>327</sup> *Id.*

<sup>328</sup> *Id.*

<sup>329</sup> *Id.*

<sup>330</sup> *Id.*

<sup>331</sup> *Id.*

<sup>332</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00073 (E-mail from Robert Fink to Jack Quinn (Dec. 26, 2000)) (Exhibit 62).

<sup>333</sup> *Id.*

<sup>334</sup> Telephone interview with William P. Barr (Mar. 10, 2002).

<sup>335</sup> *Id.*

<sup>336</sup> *Id.*

<sup>337</sup> *Id.*

## **B. The Preparation of the Pardon Petition**

The centerpiece of Marc Rich's effort to obtain a Presidential pardon was the pardon petition, which was put together by the Marc Rich legal team in October and November 2000. The main attorneys involved in preparing the pardon petition were Jack Quinn; Kathleen Behan; Robert Fink; Christopher Man, an associate at Arnold & Porter; Michael Hepworth, Of Counsel at Piper Marbury Rudnick & Wolfe; and G. Michael Green of Dickstein Shapiro Morin & Oshinsky. These lawyers spent dozens, if not hundreds, of hours compiling the petition.

The resulting document, which had a number of misrepresentations and factual inaccuracies, was a surprisingly poor effort, considering the amount of time and money that went into it. The argument section of the petition, the only portion that was actually drafted anew in October and November 2000, totaled 31 double-spaced pages. The first 20 of those pages were dedicated to biographical sketches of Rich and Green. These pages attempted to cast Rich and Green in a favorable, even likable light. These statements seem almost laughable given what the world knows now about Marc Rich and Pincus Green:

Mr. Rich and Mr. Green have lived exemplary, indeed, remarkable lives. Although they have suffered terrible hardships as the result of their exile from the United States, they have continued to work productively and contribute to society.<sup>338</sup>

Although it is true that the work of Rich and Green assisted the governments of countries like Iraq, Iran, and Libya, it is difficult to argue that they contributed to the United States once they fled their country and attempted to renounce their citizenship.

Included in the attempt to make Marc Rich seem like the victim was a reference to the tragic death of his daughter Gabrielle while Marc Rich was a fugitive from justice: "Because Gabrielle lived and died in the United States, Mr. Rich felt the extra weight of being unable to personally visit with her during her final months."<sup>339</sup> This claim, which was repeated by Denise Rich in her appeals to the President, made it sound as if the prosecutors in the Southern District of New York denied Rich the opportunity to visit with his dying daughter. Nothing could be further from the truth. Rich knew that if he returned he would receive bail, and that he would not be incarcerated unless convicted of the crimes he had been accused of committing. He was prevented from returning to visit his dying daughter only if he refused to face the U.S. justice system. Rich's desire to both have his cake and eat it too, makes it difficult to generate any sympathy for him in this matter. In fact, the only possible conclusion is that Marc Rich placed his own needs over those of his daughter.

The petition also made it sound as if Rich was providing the world with an economic benefit through his dealings:

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<sup>338</sup> Petition for Pardon for Marc Rich and Pincus Green, Memorandum in Support of Petitioners' Application for Pardon 4 (Dec. 11, 2000) (Appendix III).

<sup>339</sup> *Id.* at 7 n.1.

In building this business, Mr. Rich and Mr. Green made substantial contributions to the world economy by increasing competition — and even breaking cartels — in the physical commodities industries.<sup>340</sup>

Of course, the petition did not mention that Marc Rich's business was built by supporting corrupt and dictatorial regimes across the world, ranging from Communist Cuba to apartheid South Africa. Nor did the petition mention that Rich's deals with third world countries meant that Rich himself gained monopolies over commodities that often paid developing nations less than fair-market prices for their commodities. Nor did the petition point out that Rich provided opportunities to those regimes the United States was actively attempting to penalize, including Iran during the period when 54 Americans were held hostage at the U.S. Embassy in Tehran.

The petition also made the claim that Rich and Green's lives were exemplary, setting aside the 65-count indictment:

Other than the allegations for which clemency is sought, Mr. Rich and Mr. Green never have been charged with a crime. Indeed, Mr. Rich's and Mr. Green's lives both before and after the accusations have been ones of hard-working, resourceful businessmen who have become remarkably successful and have devoted much time and money to philanthropy and statesmanship.<sup>341</sup>

Again, the pardon petition made no mention of other less-than-savory aspects of Marc Rich's business dealings, for which he was never prosecuted, but which remain of questionable legality and morality, including supporting the Khomeini regime while it held U.S. hostages, selling weapons and missile parts to Khomeini, and trying to do business with Saddam Hussein during the Gulf War.

The petition then takes six pages to argue that the indictment of Rich and Green was flawed and unfair, and the appropriate subject of a Presidential pardon. As described below, these arguments were largely a rehash of the same arguments that Rich and his lawyers had been making since the indictment was handed down. The final four pages of the petition were used to explain that it was permissible for the President to issue a pardon before a conviction. Also attached to the petition were the "letters of support," as well as other attachments, including the tax analysis by Professors Ginsburg and Wolfman, as well as other varied materials related to negotiations with the Southern District of New York and the President's pardon power in general.

### **C. The Misleading Legal Arguments in the Petition**

The pardon petition crafted by Jack Quinn and the other attorneys on the Rich legal team is filled with numerous misleading and disingenuous legal arguments. Many commentators have stated that Quinn was merely being a good lawyer providing zealous representation to Marc Rich. However, many of the points made by Quinn and others go beyond zealous representation to the point of deception. Quinn had a responsibility to be honest in the pardon petition, and he

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<sup>340</sup> *Id.* at 6.

<sup>341</sup> *Id.* at 20.

failed. Normally, such dishonesty would not have a tremendous effect, but when it was combined with the total failure of the Clinton White House to examine the Rich case, the result was disastrous.

## **1. The Indictment of Rich Was Not Flawed**

The first charge leveled by Quinn and the Rich legal team is that Rich and Green and their companies, Marc Rich + Co. A.G. (“A.G.”) and Marc Rich + Co. International, Ltd. (“International”), were subjected to an “unprecedented criminal investigation” and “a unique indictment based on now-discarded and rejected theories.”<sup>342</sup> Notwithstanding the fact that this is an argument made by almost all individuals and companies accused of white collar crime, this claim is especially specious here.

### **a. The Department of Energy Regulations Were Fair**

In his pardon petition, Rich claimed to have been the victim of overly complex and unfair Department of Energy regulations. One element of this line of defense is that the regulations governing the conduct for which Rich and Green were indicted were too confusing. According to the pardon petition, the Department of Energy regulations limiting prices in oil reselling were “extremely complicated,” and were therefore rescinded in January 1981 because they were “unworkable.”<sup>343</sup> Such an argument is completely disingenuous. Rich and Green were able to understand the regulations well enough to exploit them for millions of dollars in profit. Regardless of whether they outlived their usefulness, they were deemed appropriate at the time when the United States was seriously concerned about fuel shortages. More important, they were the law at that time, and Rich and Green therefore had a duty to play by the rules or face the consequences. Indeed, other companies were able to obey the law and were not subject to prosecution.

Quinn also argued that the Department of Energy indicated that Rich and his company “properly . . . accounted for the transactions.”<sup>344</sup> This argument is irrelevant because Rich’s accounting was not the central issue. Rather, Rich’s companies falsified reports in order to hide profits over the legal limits in violation of law. Marc Rich’s own companies admitted as much when they pled guilty and paid \$200 million in taxes, penalties, and interest. As the lawyers for Rich’s companies stated in federal court:

Beginning in September 1980 International generated millions of dollars of income from crude oil transactions which International should have disclosed but intentionally did not disclose to the Internal Revenue Service and the Department of Energy.

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<sup>342</sup> *Id.*

<sup>343</sup> *Id.* at 21.

<sup>344</sup> *Id.* at 27.

In connection with matters within the jurisdiction of agencies of the United States, specifically the Department of Energy and the Internal Revenue Service, International and A.G. knowingly and wilfully made those documents and the ERA 69s filed with the Department of Energy which were false in that they failed to disclose material facts regarding the actual income from those crude oil transactions[.]<sup>345</sup>

This language from the allocution clearly demonstrates not only that the Department of Energy in no way exonerated Rich and Green's activities, but also that Rich and Green and their companies clearly understood the nature of the supposedly complicated regulations well enough to violate them "knowingly and wilfully." Their arrangement with West Texas Marketing was clearly intended to contravene the regulations and perpetrate tax fraud against the United States.

#### **b. Rich and Green Were Not Singled Out**

Another element of Quinn's attack on the indictment is that Rich and Green were unfairly singled out because "others engaging in similar activity" were pursued only in civil regulatory actions.<sup>346</sup> This argument is simply false, and a minimally competent lawyer would have known that it was false. Even Rich's own lawyers had earlier determined this in their research, which was also in Jack Quinn's possession. According to a 1988 memo drafted by Rich's lawyers, there were 48 criminal cases nationwide brought against crude oil resellers.<sup>347</sup> In 14 cases, the defendants spent some time in prison.<sup>348</sup> Texas resellers John Troland and David Ratliff of West Texas Marketing were prosecuted for "daisy chain" oil transactions and for falsely classifying different types of crude oil to skirt DOE regulations. It was while serving 10 months in prison that they first alerted prosecutors to the activities of Rich and Green.

Rich's lawyers have also argued that, unlike Rich and Green, the few violators who were pursued criminally were involved in "daisy chaining" or miscertification (falsely labeling controlled oil as uncontrolled oil).<sup>349</sup> However, Rich and Green were not alone in facing criminal penalties even though they were not accused of miscertification. Oscar Wyatt, David Chalmers, and Sam Wilson, Jr. pled guilty to a willful violation of the price control enforcement provision that involved no accusation of miscertification.<sup>350</sup> These cases are consistent with the relevant statute, which distinguishes between civil and criminal violations on the basis of whether the conduct was willful — not whether it involved miscertification.<sup>351</sup>

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<sup>345</sup> Transcript of Allocution, *U.S. v. Marc Rich + Co., A.G. et al.* 18–19 (S.D.N.Y. Oct. 11, 1984) (S 83 Cr. 579) (Exhibit 5).

<sup>346</sup> Petition for Pardon for Marc Rich and Pincus Green, Memorandum in Support of Petitioners' Application for Pardon 22 (Dec. 11, 2000) (Appendix III).

<sup>347</sup> Jack Quinn Document Production (Memorandum from Mark Ehlers to Scooter Libby 1 n.1 (June 10, 1988)) (Exhibit 63).

<sup>348</sup> *Id.* at 1–2 n.2.

<sup>349</sup> Quinn made this argument before the Senate Judiciary Committee. See "President Clinton's Eleventh Hour Pardons," *Hearing Before the Senate Judiciary Comm.*, 107th Cong. 78 (Feb. 14, 2001) (testimony of Jack Quinn).

<sup>350</sup> Jack Quinn Document Production (Memorandum from Mark Ehlers to Scooter Libby 2–3 n.4 (June 10, 1988)) (Exhibit 63).

<sup>351</sup> 15 U.S.C. § 754 (1982 ed.).

More important, Rich and Green were also involved in illegal conduct that was unique in the context of the commodity they were trading. In September 1980, DOE clarified its oil reseller regulations to make it plain that resellers were not permitted to profit more than \$0.20 per barrel.<sup>352</sup> Rich and Green made profits far in excess of that limitation but created fraudulent invoices and filed false reports to hide about \$100 million in illegal profits from both the DOE and the IRS. In other words, Rich and Green were engaged in classic criminal financial fraud. The grand jury in New York had ample evidence from documents and witnesses that Rich and Green were willfully violating the price controls and, as discussed above, their companies later pled guilty to doing so.<sup>353</sup>

Quinn further tried to advance the argument that Rich and Green's entire case was *sui generis* by stating in the petition that similarly situated individuals and corporations such as ARCO were never criminally charged.<sup>354</sup> However, ARCO was not a similarly situated corporation because it was never involved in attempting to hide illegal profits as was Rich's company. In fact, in looking at the more analogous case of the corporations (West Texas Marketing and Listo Petroleum) that helped Rich hide illegal profits, the executives of those companies were prosecuted. Two executives from West Texas Marketing served 10 months in prison and one from Listo pled guilty to felony charges of making false statements and was sentenced to five years probation and fined \$5,000.<sup>355</sup>

Beyond being completely false, the argument that Marc Rich was "singled out" for prosecution also draws upon the preposterous claims, made by Marc Rich himself, that the prosecution was the result of anti-Semitism.<sup>356</sup> In an interview with the Israeli Ma'ariv Weekend Magazine, Rich stated, "I'm convinced that the fact that I was a foreigner and a relative newcomer on the oil-trading market and Jewish influenced the manner in which my case was handled."<sup>357</sup> Rich has never provided any support for this outlandish claim. Rich's clumsy attempt to play the race card was rejected even by associates like Abraham Foxman, who found no evidence to support it. Rich's attorneys did not make any overt reference to anti-Semitism in the pardon petition, but did repeatedly claim that Marc Rich had been "singled out" by prosecutors, never explaining why they believed that to be the case. Furthermore, Quinn's own notes make it appear possible that he raised the specter of anti-Semitism in his last-minute appeal to the President on January 19, 2001.<sup>358</sup> It is unfortunate that the President found Rich's arguments believable — when in fact, they were completely inaccurate — a fact the President could have discovered with minimal due diligence.

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<sup>352</sup> *U.S. v. Marc Rich, Pincus Green et al.* 9 (S.D.N.Y. Mar. 6, 1984)(S 83 Cr. 579).

<sup>353</sup> Telephone Interview with Morris "Sandy" Weinberg, Jr., former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Feb. 7, 2001).

<sup>354</sup> Petition for Pardon for Marc Rich and Pincus Green, Memorandum in Support of Petitioners' Application for Pardon 26 (Dec. 11, 2000) (Appendix III).

<sup>355</sup> See Patrick E. Tyler, *U.S. Grand Jury Probing Shift of Oil Profits*, WASH. POST, Oct. 18, 1982, at A1. See also *Rich Associate gets Probation*, ASSOCIATED PRESS, Dec. 17, 1984.

<sup>356</sup> While these arguments were not made explicitly in the pardon petition, Rich made them in the media, and Jack Quinn may have made them to President Clinton. See Section IV(G)(4).

<sup>357</sup> Bo'az Ga'on, *Rich as Korach*, MA'ARIV WEEKEND MAGAZINE, Oct. 1, 1999 (Exhibit 6).

<sup>358</sup> For a detailed discussion, see Section IV(G)(4) below.

**c. Rich and Green Did Trade with the Enemy**

The pardon petition claims that “the Iranian [trading with the enemy] counts were added to the indictment to incite public opinion against the defendants.”<sup>359</sup> The petition further claims that “[t]he prosecutors quietly dropped the Iranian claims against the companies, but never dealt with the claims against the individuals.”<sup>360</sup> By making this claim, Rich suggested that the charges had no merit. In fact, the charges appear to have been accurate, and were only dropped from the indictment for technical reasons. The trading with the enemy charges against the Marc Rich companies were dropped because Clyde Meltzer — the Listo petroleum executive who, unlike Rich and Green, did not flee the United States — was not involved in trading with Iran. Since Rich and Green fled and were unavailable for trial, the only charges of conspiracy against the remaining defendants were unrelated to Iran.

The charges against Rich and Green personally for trading with Iran during the hostage crisis were never dropped or dismissed. They remained in effect at the time of the pardon.<sup>361</sup> Indeed, there is voluminous evidence that Rich and Green traded with Iran, in addition to a number of other prominent enemies of the United States. While a foreign company may have been allowed to trade with Iran, Rich and Green were American citizens and it was illegal for them to engage in trade with Iran regardless of whether they did so on foreign soil or through the use of a foreign corporation. In fact, the evidence showed that Rich and Green negotiated the deals from the Manhattan offices of Marc Rich International, an American firm.<sup>362</sup> It was the height of irresponsibility for Marc Rich and his lawyers to suggest that prosecutors charged Rich with trading with the enemy only to “incite public opinion” against Rich when Rich was, in fact, trading with Iran.

Jack Quinn, who signed the pardon petition, admitted in the Committee’s February 8, 2001, hearing that Rich had indeed traded with Iran:

Mr. Shays: Did Mr. Rich trade with Iran when U.S. hostages were being held captive?

Mr. Quinn: I do not know the precise answer to that question. It is my belief that he traded with Iran. I can’t tell you right now when that occurred.

Mr. Shays: Should it make any difference to you if it did?

Mr. Quinn: Again, I approached this as a lawyer concerned with the indictment that was before me and whether or not it should stand. I was not here to be a character witness. I was here to take on four points —

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<sup>359</sup> Petition for Pardon for Marc Rich and Pincus Green, Memorandum in Support of Petitioners’ Application for Pardon 22 (Dec. 11, 2000) (Appendix III).

<sup>360</sup> *Id.*

<sup>361</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 110 (Feb. 8, 2001) (testimony of Morris “Sandy” Weinberg, Jr., former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice).

<sup>362</sup> *Id.*



Mr. Shays: It didn't make any difference to you. Should it have made a difference to the President of the United States?

Mr. Quinn: It is something he well may have taken into consideration, certainly.<sup>363</sup>

While Quinn admitted that he knew that Rich did indeed trade with Iran, he failed to address how he could state in the pardon petition that "the prosecutors quietly dropped the Iranian charges against the companies, but never dealt with the claims against the individuals." Quinn likely failed to address this statement because he knew the implication that the charges were "quietly" dropped for lack of evidence is misleading.

#### **d. Rich and Green Did Evade Federal Taxes**

Quinn and the Rich legal team also attacked the core tax evasion counts in the indictment against Rich and Green. As they argued in the petition, "The tax treatment of the transactions in the indictment, however, is governed by a U.S.-Swiss tax treaty, which was ignored by the prosecution. . . . The transactions in issue were consistently reported in accordance with the tax treaty."<sup>364</sup> In making these arguments, Rich's lawyers relied on what they called the "independent" analyses of law professors Bernard Wolfman and Martin Ginsburg.<sup>365</sup> However, the language from the pardon application is misleading in its use of the word "independent." First of all, the professors were paid handsomely by Marc Rich for their work on his behalf. Professor Ginsburg, husband of Supreme Court Justice Ruth Bader Ginsburg, was paid \$66,199 for his work on the Rich case.<sup>366</sup> Professor Wolfman was paid \$30,754 for his analysis.<sup>367</sup> Wolfman was hired as a consultant by one of Rich's firms, and was paid between \$250 and \$300 per hour.<sup>368</sup> Hence, the analysis was not "independent" of Marc Rich. Second, the professors did not come to the same conclusion "independently" of each other, but rather worked jointly. Third, they emphasized that their analysis made "no independent verification of the facts," and that they were merely "accepting the statements thereof made to us by" Marc Rich's attorneys.<sup>369</sup> As Rich prosecutor Martin Auerbach stated:

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<sup>363</sup> *Id.* at 111.

<sup>364</sup> Petition for Pardon for Marc Rich and Pincus Green, Memorandum in Support of Petitioners' Application for Pardon 23 (Dec. 11, 2000) (Appendix III).

<sup>365</sup> *Id.*

<sup>366</sup> Letter from Professor Martin D. Ginsburg, Professor, Georgetown University Law Center, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Feb. 12, 2001) (Exhibit 64). Ginsburg is also of Counsel at Fried, Frank, Harris, Shriver & Jacobson. Of the \$66,199 received by his firm on the Rich matter, \$43,980 reflected work by Ginsburg personally. The remainder reflects work by other attorneys assisting Ginsburg. Ginsburg billed his time at rates of \$300 to \$400 per hour. *Id.*

<sup>367</sup> Letter from Bernard Wolfman, Professor, Harvard Law School, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Feb. 8, 2001) (Exhibit 65).

<sup>368</sup> *Id.*

<sup>369</sup> Jack Quinn Document Production (Letter from Bernard Wolfman, Professor, Harvard Law School, to Gerard E. Lynch, Criminal Division Chief of the Office of the U.S. Attorney for the S.D.N.Y., Department of Justice (Dec. 7, 1990)) (Exhibit 66).

The transmittal letter that came with that analysis says it all and betrays the problem, the fundamental flaw in the pardon application as it was applied to Mr. Rich and Mr. Green, and that is a complete absence of a knowledge of the facts, the true facts of this case, the facts that led the companies to plead guilty.

When that analysis was sent 10 years ago, the professors who wrote it said, . . . quote, making no independent verification of the facts but accepting the statements thereof made to us by Mr. Rich and Mr. Green's lawyers.

And that is the problem. The President relied on the facts as described to him by Mr. Rich and Mr. Green's lawyers, making no independent investigation.<sup>370</sup>

In the end the analysis by the two professors cannot, and does not, attempt to explain the necessity for double accounting, phony invoices, and false reports to the Department of Energy. Nor do the professors discuss the double accounting, phony invoices, and false reports employed by Rich and Green to hide their illegal profits. The only rational explanation for the artifices employed by Rich is that he was fraudulently attempting to hide profits from the DOE and the IRS. In the final analysis, it is hard to avoid the conclusion that Professors Ginsburg and Wolfman sold their names to the highest bidder, thereby turning their backs on the accounting and legal considerations that were necessary for a meaningful professional opinion.

Quinn further attempted to justify the granting of a pardon by explaining that Rich's companies reached a settlement with the government and "paid a total of approximately 200 million dollars in back taxes, interest, fines and foregone tax deductions, an amount far in excess of any taxes, penalties or interest which might have been assessed in a civil tax proceeding."<sup>371</sup> Far from being a reason to grant a pardon, this fact only proves the point that Rich and Green fled from justice because they were caught red-handed and most likely would have gone to prison if they stood trial in the United States. Marc Rich + Co., A.G. and Marc Rich + Co. International, Ltd. each pled guilty to making false statements and evading about \$48 million in taxes because the strength of the case against them was overwhelming.<sup>372</sup> Rich's companies pled guilty to a criminal scheme to conceal "in excess of \$100 million in taxable income . . . most of which income was illegally generated through the defendants' violations of federal energy laws and regulations."<sup>373</sup> Rich's companies further admitted that they had engaged in this criminal

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<sup>370</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 106 (Feb. 8, 2001) (testimony of Martin J. Auerbach, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice).

<sup>371</sup> Petition for Pardon for Marc Rich and Pincus Green, Memorandum in Support of Petitioners' Application for Pardon 24–25 (Dec. 11, 2000) (Appendix III).

<sup>372</sup> The case against Rich and Green individually was just as strong as the case against the companies. As noted above, Edward Bennett Williams offered to have Rich pay \$100 million to settle the charges against him individually. Prosecutor Sandy Weinberg told Williams that the government would not reach any settlement that did not result in jail time for Rich. See "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the House Comm. on Govt. Reform*, 107th Cong. 176 (Feb. 8, 2001) (testimony of Morris "Sandy" Weinberg, Jr., former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice). See also EVAN THOMAS, *THE MAN TO SEE: EDWARD BENNETT WILLIAMS* 415–16 (1991).

<sup>373</sup> Indictment, *U.S. v. Marc Rich, Pincus Green et al.* at 3–4 (Mar. 6, 1984) (S 83 Cr. 579) (Exhibit 4). See Transcript of Allocution, *U.S. v. Marc Rich + Co., A.G., Marc Rich Int'l, Ltd. et al.* at 11 (Oct. 11, 1984) (SS 83 Cr. 579) (Exhibit 5).

scheme “together with Marc Rich, Pincus Green . . . and others . . . unlawfully, wilfully and knowingly[.]”<sup>374</sup> That Rich’s companies paid these moneys and made these admissions of guilt squarely contradicts Quinn’s claim that the indictment was without merit.

## **2. The Prosecutors Were Not “Overzealous”**

A second theme in the pardon application is that the investigation and indictment of Rich and Green was flawed because the prosecutors were overzealous and overly ambitious. Quinn attacked not only Weinberg and Auerbach on this basis, but also Rudolph Giuliani who was at the time the United States Attorney for the Southern District of New York. As with the claims of the flawed indictment, however, these claims were also misleading.

### **a. The Prosecutors Negotiated with Rich and Green**

The pardon petition claims that the federal prosecutors refused to negotiate with Rich and Green. Quinn repeated this claim before the Committee, as well as in the press. However, as is discussed in detail above, Rich and Green were fugitives. The Southern District of New York had (and continues to have) a longstanding policy of not negotiating with fugitives from justice. As was explained by the SDNY in its February 2, 2000, letter to Quinn, negotiating with fugitives “would give defendants an incentive to flee,” providing them “the inappropriate leverage and luxury of remaining absent unless and until the Government agrees to their terms.”<sup>375</sup> The particular history of the office’s dealings with Rich counseled against negotiations. As is discussed in detail above, Rich had a history of acting in bad faith during the grand jury investigation. From refusal to obey grand jury subpoenas to attempting to fly two steamer trunks full of subpoenaed documents to Switzerland, Rich showed that he was not the type of defendant with whom to negotiate.

Yet even with such outrageous conduct, the Southern District of New York made many good faith efforts to reach an accommodation with Rich. During the investigation of Rich and his companies, prosecutors undertook numerous negotiations with Rich’s lawyers, which resulted in the guilty pleas by Rich’s companies. Even after Rich fled the country, prosecutors attempted to negotiate terms for Rich’s return. In the early 1990’s, U.S. Attorney Otto Obermaier and a top prosecutor in his office took the extraordinary step of flying to Switzerland and meeting with Marc Rich in an attempt to negotiate a resolution to the case. Moreover, the Southern District made numerous accommodations for Rich, including offering to drop the RICO charges as well as allowing him and Green to stand trial without spending any time in jail prior to trial. Despite these efforts, Rich and Green refused to return to the United States to stand trial. Rather, they would only return as part of a settlement that guaranteed they would not serve jail time unless convicted. It is therefore misleading for Quinn to simply state that the Southern District of New York “takes the position that it will not even discuss the matter while Mr. Rich

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<sup>374</sup> Indictment, *U.S. v. Marc Rich, Pincus Green et al.* at 3 (Mar. 6, 1984) (S 83 Cr. 579) (Exhibit 4). See Transcript of Allocation, *U.S. v. Marc Rich + Co., A.G., Marc Rich Int’l, Ltd. et al.* at 11 (Oct. 11, 1984) (SS 83 Cr. 579) (Exhibit 5).

<sup>375</sup> Jack Quinn Document Production (Letter from Mary Jo White, U.S. Attorney for the S.D.N.Y., Department of Justice, to Jack Quinn and Kathleen Behan, Partner, Arnold & Porter (Feb. 2, 2000)) (Exhibit 51).

and Mr. Green continue to live outside of the United States.”<sup>376</sup> By itself, this statement fails to account for the numerous good faith efforts of the prosecutors in spite of their well-founded reluctance to negotiate with fugitives.

Quinn also argued in the petition that the Southern District had “negotiated with numerous other absent defendants over the years, and the Department of Justice has no such policy against such negotiations.”<sup>377</sup> However, as the Southern District noted in its February 2, 2000, letter to Quinn, Department of Justice policy places the decision to negotiate with a fugitive within the discretion of the office responsible for the prosecution.<sup>378</sup> The Southern District of New York was well within the reasonable exercise of its discretion to require Rich to return to the United States before engaging in further negotiation, especially given Marc Rich’s history of bad faith behavior and brazen legal tactics.

Finally, Quinn argued that the Southern District refused to negotiate with his legal team by failing to agree to a meeting between Professors Wolfman and Ginsburg and tax experts in the Department of Justice.<sup>379</sup> This, too, is misleading. As the Southern District explained in the February 2, 2000, letter to Quinn, “in 1987, an Assistant in this Office met with Mr. Rich’s counsel and listened to the same presentation by Professor Martin D. Ginsburg referenced in your letter regarding the merits of the tax charges.”<sup>380</sup> Prosecutors had rejected the Wolfman/Ginsburg analysis because it was based on an inaccurate and incomplete representation of the facts of this case. Its legal conclusions were, therefore, irrelevant. For the Southern District to meet with the professors again would have been redundant and fruitless.

#### **b. The Rich Prosecution Was Not Tainted with Media Attention**

Quinn and the Rich legal team further tried to discredit the prosecution by claiming that United States Attorney Rudolph Giuliani was unfairly bringing the glare of the media to the case. According to the pardon petition, Giuliani “aggressively” pursued Rich and Green in court as well as in the press: “Not only did Mr. Giuliani and other prosecutors from his office speak frequently to the media in off and on record conversations, the office held formal press conferences where purported ‘evidence’ against Mr. Rich and Mr. Green was showcased to the press.”<sup>381</sup> Responding to this charge, Mayor Giuliani said on *Meet the Press*,

First of all, the indictment was actually just about put together before I even became United States Attorney. It’s been pursued by at least three Democratic appointees, who were United States attorney and the Justice Department, that had

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<sup>376</sup> Petition for Pardon for Marc Rich and Pincus Green, Memorandum in Support of Petitioners’ Application for Pardon 25 (Dec. 11, 2000) (Appendix III).

<sup>377</sup> *Id.*

<sup>378</sup> Jack Quinn Document Production (Letter from Mary Jo White, U.S. Attorney for the S.D.N.Y., Department of Justice, to Jack Quinn and Kathleen Behan, Partner, Arnold & Porter (Feb. 2, 2000)) (Exhibit 51).

<sup>379</sup> Petition for Pardon for Marc Rich and Pincus Green, Memorandum in Support of Petitioners’ Application for Pardon 26 (Dec. 11, 2000) (Appendix III).

<sup>380</sup> Jack Quinn Document Production (Letter from Mary Jo White, U.S. Attorney for the S.D.N.Y., Department of Justice, to Jack Quinn and Kathleen Behan, Partner, Arnold & Porter (Feb. 2, 2000)) (Exhibit 51).

<sup>381</sup> Petition for Pardon for Marc Rich and Pincus Green, Memorandum in Support of Petitioners’ Application for Pardon 23 (Dec. 11, 2000) (Appendix III).

him number six on the fugitive list, was President Clinton's Democratic Justice Department. And the United States attorney of the Southern District in New York, an appointee of President Clinton, is as outraged as I am by the pardon that was given here. . . . You've been covering me a long time, right, running for office? Did you ever hear me mention Marc Rich? So this was hardly used by me in any way in any of my political campaigns. . . . And the fact that he was a fugitive — it was not something [about which I would] say, 'Gee, look what a good job I did as United States attorney.' So that's kind of a silly thing to [s]ay.<sup>382</sup>

Rudolph Giuliani was one of dozens of prosecutors, Republican and Democrat, who worked on the Rich case. Robert Litt and Gerald Lynch were prominent Democrats who were also involved in the case. It would be strange for Quinn also to accuse them of overcharging. Litt was one of Attorney General Janet Reno's closest advisors, and Lynch, currently a professor at Columbia University Law School, was appointed to the federal bench by President Clinton. The two main prosecutors who brought the Rich case, Morris Weinberg and Martin Auerbach, were Democrats as well. The attempt to cast the Rich indictment as the result of partisan prosecutorial overreaching by Rudolph Giuliani is simply one more fabrication by Marc Rich's legal team. This argument had no basis in reality, and likely was invented to appeal to President Clinton's partisan instincts, as well as his dislike for aggressive prosecutors. As many have observed, by the end of his term, President Clinton was very sensitive to issues of prosecutorial overreaching, as a result of his perceptions of the Independent Counsel investigations.<sup>383</sup> Quinn exploited these sentiments masterfully by fabricating claims regarding prosecutorial conduct in the Rich case.

### **c. RICO Charges Were Fairly Brought**

The pardon application also accuses the federal prosecutors of unfairly bringing a racketeering charge against Rich and Green. According to Quinn, RICO was misused because the underlying allegation involved tax fraud.<sup>384</sup> The petition points to a Department of Justice policy that was adopted in 1989, stating that, "[f]ollowing the indictment, the United States government recognized the misuse of RICO in tax fraud cases and issued guidance in the United States Attorney's Manual explicitly stating that tax offenses are not predicates for RICO offenses."<sup>385</sup> Jack Quinn suggested at the Committee's February 8, 2001, hearing that the decision to bring RICO charges against Marc Rich and Pincus Green was the key factor that led to their flight from the United States:

It's the position of my client that he remained outside the United States because what Mr. Weinberg earlier described to you as, in essence, a simple tax evasion case was also made into a RICO case. And he may choose to say it was only one

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<sup>382</sup> *Meet the Press* (NBC television broadcast, Jan. 28, 2001).

<sup>383</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 341 (Feb. 8, 2001) (statement of the Honorable Henry Waxman).

<sup>384</sup> Petition for Pardon for Marc Rich and Pincus Green, Memorandum in Support of Petitioners' Application for Pardon 22 (Dec. 11, 2000) (Appendix III).

<sup>385</sup> *Id.*

count in the indictment, but it was the sledgehammer that brought about the current impasse.<sup>386</sup>

Quinn's argument is flawed for a number of reasons. First, at the time of the indictment, there was no policy against bringing RICO charges predicated on tax offenses. To the contrary, the RICO charges were brought consistent with Justice Department policy and the RICO charges were reviewed and approved by the RICO section of the Department of Justice — as were the tax charges by the tax section.<sup>387</sup> As prosecutor Sandy Weinberg observed:

If you're away for 20 years and you're fortunate enough to be able to persuade two foreign States not to extradite you, the gloss of time is always going to change the interpretation of the law. You can look at indictments that were brought in 1980, and if you examine them in 2000, the gloss of time is — you're going to find that the courts interpret the laws different in 2000 than they did in 1980.

But you've got to look at the guts of what the case was about and these people. And when you look at the guts of what the case was about and the people, it doesn't make any difference whether or not we would bring a RICO charge today. It is whether or not we would bring a criminal charge today and whether or not it is acceptable to be pardoning folks who have done things like renouncing their citizenship, becoming fugitives, not coming back and making these arguments that they say are so clear. I mean it — was it justified? And you can't come in and say, well, 20 years have passed and, you know, the courts now interpret or the Justice Department interprets the RICO statute differently.<sup>388</sup>

Along similar lines, even former Clinton White House Counsel Abner Mikva has stated:

Clearly, a defendant would rather negotiate the unfairness of RICO charges from a comfortable abode in Switzerland than from a hardback chair in the U.S. attorney's office in Manhattan. This is especially true when defendants have been trying, unsuccessfully, to make the same "unfair" point about RICO for the last 30 years.<sup>389</sup>

Second, Quinn's argument also fails to address the non-tax RICO predicates in the case or the fact that there are money laundering statutes available today that were not available in 1980. As prosecutor Martin Auerbach observed:

I'm afraid that the argument with respect to the change in RICO policy is as disingenuous as I find the argument with respect to fugitivity. While it is true that

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<sup>386</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 161 (Feb. 8, 2001) (testimony of Jack Quinn).

<sup>387</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 187 (Feb. 8, 2001) (testimony of Morris "Sandy" Weinberg, Jr., former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice).

<sup>388</sup> *Id.* at 156.

<sup>389</sup> *Coming in from the Cold*, THE RECORDER, Mar. 28, 2001, at 5.

the Justice Department changed its view with respect to tax counts as a predicate for RICO, it has not changed its view with respect to mail and wire fraud as a predicate to RICO. And as Mr. Quinn knows, as the indictment reflects, there are both mail and wire fraud counts which are predicates for RICO.

So I believe that the Justice Department might well approve this indictment today. And I, in fact, believe that, were they to review this indictment today, and of course they did review it before it was brought, there would be money laundering charges in this case.<sup>390</sup>

Therefore, it is likely that if he was charged today, Rich would be facing stiffer, not lighter penalties.

Third, and most importantly, Quinn conveniently ignored the fact that the prosecutors tried to reach an accommodation with the two fugitives by offering to drop the RICO charges. As Robert Fink himself testified to the Committee, he was in discussions with prosecutors during which they offered to drop the RICO charges if Rich and Green would simply stand trial in the United States.<sup>391</sup> These discussions are reflected in a February 10, 2000, e-mail from Robert Fink to Avner Azulay: “[a]t those times the office [Southern District of New York] offered to do a variety of things, none of which are necessarily still on the table. First, I was told at one point that they would drop the RICO charge if we wanted if Marc came in.”<sup>392</sup> Given the willingness of the SDNY to drop the RICO charges, Quinn’s claim that the RICO charge was “the sledgehammer that brought about the current impasse,” is completely inaccurate and misleading.

It appears that even Jack Quinn realized that the arguments in the petition were deeply flawed. On December 29, 2000, he sent the following e-mail to Kathleen Behan:

What do you think our chances really are for Marc? the hardest question, i think, is “if you’re right about the weakness of the govts case, why not go to ct and win?” the answr, i guess is that we couldn’t have gotten a fair trial, but that was 18 years ago. couldn’t he get one now? isn’t that the way this shd go? these are tough questions, but I guess we have decent answers.<sup>393</sup>

It is unclear what “decent answers” Quinn had to that argument or to any of the multiple arguments against the Rich pardon.

#### **D. The “Letters of Support” in the Petition**

The legal arguments contained in the petition are not the only problematic section

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<sup>390</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 156 (Feb. 8, 2001) (testimony of Martin J. Auerbach, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice).

<sup>391</sup> *Id.* at 469 (testimony of Robert Fink).

<sup>392</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00697 (E-mail from Robert Fink to Avner Azulay, Director, Rich Foundation (Feb. 10, 2000)) (Exhibit 32).

<sup>393</sup> Arnold & Porter Document Production KB00037 (E-mail from Jack Quinn to Kathleen Behan, Partner, Arnold & Porter (Dec. 29, 2000)) (Exhibit 67).

of the Rich and Green pardon petition. The “letters of support” in the petition also raise several troubling issues. Most of the letters were collected by Avner Azulay.<sup>394</sup> Those letters were a crucial part of the pardon petition, as they helped create the impression that Marc Rich was a humanitarian who had made a minor mistake but who had a positive impact on countless lives. The significance and import of the letters presented to President Clinton was compromised by several factors, including: (1) many of those who wrote the letters in support of the pardon were either themselves, or their organizations, given money by Rich; (2) many who wrote the letters were misled about the purpose of the letter; and (3) their letters were misrepresented to the President. Given these facts, the letters of support in the Rich pardon petition represent just one more dishonest ploy in Marc Rich’s overall scheme to obtain a pardon.

### **1. Rich Paid a Number of Individuals Who Wrote in His Support**

The letter written by Abraham Foxman is one of the most prominently displayed letters in the petition. As National Director of the Anti-Defamation League (ADL), his support of clemency for Marc Rich was of obvious importance to the application. However, the ADL received \$100,000 from Marc Rich shortly after Foxman became involved in the pardon effort.<sup>395</sup> In fact, this money was received a few weeks after Foxman flew to Paris to meet with Rich aide Avner Azulay.<sup>396</sup> Moreover, Rich has given the ADL a total of \$250,000 since he fled the country in 1983.<sup>397</sup> Foxman has publicly denied that Rich’s contributions to the ADL had anything to do with his help in the pardon effort. He stated to a group of reporters, “I really find offensive the idea that Abe Foxman was bought for a check for \$100,000. If he gave me nothing — or he gave me \$10 million — I would have made the same decision, for which I now say I made a mistake.”<sup>398</sup>

Notwithstanding Foxman’s denial of a quid pro quo, the payment to the ADL raises the general question of Marc Rich’s tactics in drumming up support for his pardon application. The ADL was not the only organization to which Marc Rich paid money or attempted to pay money. In another instance, Marc Rich attempted to secure the assistance of the American Jewish Congress (AJC) with the promise of a large contribution. A week after Foxman’s admission, Phil Baum, executive director of the AJC revealed that his organization had been approached by a representative of Marc Rich who told them, “that if we were to speak favorably of Mr. Rich, we would be the beneficiary of a gift.”<sup>399</sup> Baum denied that there was any direct quid pro quo.<sup>400</sup> However, Baum went on to state that, “there was an understanding communicated to us[.]” Baum further stated, “It was not a contract. But these things are communicated in more subtle

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<sup>394</sup> Interview with Kathleen Behan, Partner, Arnold & Porter (Feb. 27, 2001).

<sup>395</sup> Michael Isikoff, ‘I Made a Mistake’; *The ADL’s Abe Foxman Admits the Jewish Organization Received a \$100,000 Grant from Marc Rich but Maintains He Wasn’t ‘Bought,’* NEWSWEEK, Mar. 23, 2001, at 2001 WL 24138340.

<sup>396</sup> *Id.*

<sup>397</sup> *Id.*

<sup>398</sup> *Id.*

<sup>399</sup> Beth J. Harpaz, *Jewish Group Says Rich Reps Sought Pardon Help for Money*, ASSOCIATED PRESS STATE AND LOCAL WIRE, Mar. 28, 2001. See also Brian Blomquist, *Rich Tried to Tempt Jewish Group*, N.Y. POST, Mar. 29, 2001, at 14.

<sup>400</sup> Beth J. Harpaz, *Jewish Group Says Rich Reps Sought Pardon Help for Money*, ASSOCIATED PRESS STATE AND LOCAL WIRE, Mar. 28, 2001.



ways. We had reason to hope or expect that if we did this thing, we could probably be the recipient of Mr. Rich's generous recognition of our importance."<sup>401</sup> The AJC ultimately turned down Rich's request.<sup>402</sup> Committee staff attempted to contact Baum to corroborate this account and learn other details of the offer from the Rich team. Unfortunately, Baum failed to cooperate with the Committee's investigation, refusing on three separate occasions to return phone calls from Committee staff.

Another example of Rich's efforts includes Birthright Israel, an organization that pays for young American Jews to travel to Israel. Marc Rich has pledged \$5 million to Birthright Israel.<sup>403</sup> The organization was founded by Michael Steinhardt, a longtime friend of Rich's who was heavily involved in the pardon effort. Steinhardt wrote a letter that was included in the petition. In addition, Birthright Israel's current North American Chairperson, Marlene Post, also wrote a letter supporting Rich's request for clemency.<sup>404</sup> This letter was prominently displayed in the petition. As with the public statements of the ADL and the AJC, a spokesman for Birthright Israel denied any quid pro quo relating to the \$5 million pledge to the organization and the organization's support for the Rich pardon.<sup>405</sup>

Yet another person with a connection to Birthright Israel also wrote a letter on behalf of Marc Rich. Rabbi Irving Greenberg, Chairman of the U.S. Holocaust Memorial Museum Council, wrote a letter on Holocaust Museum Council letterhead in favor of clemency for Rich. Rabbi Greenberg is also President of the Jewish Life Network, an organization that is a partner with Birthright Israel.<sup>406</sup> However, when Committee staff asked Greenberg's lawyer about press accounts of Rich's contributions, he stated that Rich had never given any contributions to any organization or entity controlled or operated by Greenberg.<sup>407</sup> Greenberg's letter and Rich's contributions to Birthright Israel caused seventeen former and current members of the Holocaust Museum Council to send a letter demanding Greenberg's resignation.<sup>408</sup> Rabbi Greenberg apologized for his letter on behalf of Rich, and ultimately, the Council voted to keep him as Chairman.<sup>409</sup>

There are other cases of Rich contributing or attempting to contribute to individuals (and their organizations) who wrote letters on his behalf. One prominent example is Jerusalem Mayor Ehud Olmert, who wrote a letter to President Clinton on November 27, 2000, that was included in the petition. According to *The New York Times*, Rich contributed \$25,000 to Olmert's first mayoral campaign in 1993.<sup>410</sup> The Committee has not been able to determine whether Rich made financial contributions to other foreign political officials who supported his pardon.

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<sup>401</sup> *Id.*

<sup>402</sup> *Id.*

<sup>403</sup> Beth J. Harpaz, *Jews Divided Over Rich Pardon*, ASSOCIATED PRESS, Mar. 29, 2001, at 2001 WL 17989287.

<sup>404</sup> Letter from Marlene E. Post, North American Chairperson, Birthright Israel, to President William J. Clinton (Dec. 7, 2000) (Exhibit 68). The original letter was part of Rich and Green's pardon petition.

<sup>405</sup> Brian Blomquist, *Rich Tried to Tempt Jewish Group*, N.Y. POST, Mar. 29, 2001, at 14.

<sup>406</sup> Jacqueline Trescott, *Holocaust Council Head Urged to Resign*, WASH. POST, Apr. 5, 2001, at C9.

<sup>407</sup> Telephone Interview with Andrew Levander, Partner, Swidler Berlin Shereff Friedman (representing Rabbi Greenberg) (May 2, 2001).

<sup>408</sup> Jacqueline Trescott, *Holocaust Council Head Urged to Resign*, WASH. POST, Apr. 5, 2001, at C9. Kitty Dukakis also signed the letter.

<sup>409</sup> *Id.*

<sup>410</sup> William A. Orme, Jr., *Marc Rich Aided Israeli Official*, N.Y. TIMES, Feb. 22, 2001, at A21.

However, the Marc Rich team was clearly concerned about inquiries along these lines. Shortly after the pardon was granted, Avner Azulay sent an e-mail to others on the Rich team stating that:

Pse [sic] keep barak [sic] out of the media. We have enough names on the list other than his. Important to keep all politicians out of the story. Pse [sic] share with me the inclusion of any one on the list. This is election time here and has a potential of blowup. A newsworld reporter here has already asked if there were any political contributions.<sup>411</sup>

Some of the other letter writers have also mentioned Rich's generosity and philanthropy as the reason for agreeing to write their letters. For example, several of the letter writers in Switzerland have ties to the Doron Foundation, an organization of Rich's that gives awards of \$63,000 to Swiss groups and individuals.<sup>412</sup> Zurich Mayor Josef Estermann was among that group.<sup>413</sup> Estermann did not return calls from Committee staff. He has, however, spoken on the matter in his home country, saying, "I think every person has a right to a pardon."<sup>414</sup> To this, one Swiss paper responded, "Yes, but does this right have to be one you can buy?"<sup>415</sup> Others with connections to the Doron Foundation who wrote letters on Rich's behalf include: Pierre de Weck, of UBS Bank; Michael de Picciotto, a director of Union Bancaire Privée in Geneva; Kurt R. Bollinger, of the Swiss Air Rescue Foundation; and Professor Verena Meyer of Zurich University. Michael de Picciotto spoke with Committee staff over the phone. When asked if Marc Rich or any of his associates had ever given anything of value to him or his company in exchange for his letter, de Picciotto responded, "an important man like Mr. Rich does not need to do anything like this."<sup>416</sup> The others with connections to the Doron Foundation failed to return Committee calls. Kurt Bollinger, whose rescue service received an award from Rich's foundation in 1992 failed to return the Committee's calls.<sup>417</sup>

Committee staff contacted or attempted to contact almost all of those whose letters were included in the section of the pardon petition entitled, "Letters Addressed to the Honorable President William J. Clinton Expressing Support for the Pardon of Mr. Marc Rich." While the Committee does not have sufficient evidence to conclude that all of the letters were written on a quid pro quo basis, it cannot completely rule out the possibility. This is largely because a number of the letter writers and intended letter writers failed to cooperate with the Committee by not returning phone calls. Nevertheless, there does appear to be a pattern of receiving contributions or pledges from Marc Rich among many of those who wrote letters. The fact that a number of the most prominent letters of support for the Rich pardon were tainted with allegations of linkage to large financial contributions diminishes Rich's claims to have been a

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<sup>411</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00191 (E-mail from Avner Azulay, Director, Rich Foundation, to Jack Quinn *et al.* (Jan. 22, 2001)) (Exhibit 69).

<sup>412</sup> Elizabeth Olson, *Pardon in U.S. for Marc Rich Creates Storm in Switzerland*, N.Y. TIMES, Feb. 4, 2001, at 11. The Doron Foundation has now been folded into the Marc Rich Foundation.

<sup>413</sup> *Id.*

<sup>414</sup> *Id.*

<sup>415</sup> *Id.*

<sup>416</sup> Telephone Interview with Michael D. de Picciotto, Managing Director, Union Bancaire Privée, Geneva, Switzerland (Apr. 26, 2001).

<sup>417</sup> Elizabeth Olson, *Pardon in U.S. for Marc Rich Creates Storm in Switzerland*, N.Y. TIMES, Feb. 4, 2001, at 11.

great humanitarian. Rather, it appears that many of Rich's humanitarian activities were just one part of a lengthy strategy to escape criminal prosecution in the U.S.

## **2. Some Who Wrote Letters Were Misled About the Purpose**

The significance and import of several of the letters is further weakened by the lack of candor of the Rich team in soliciting them. Rich's own lawyer, Robert Fink, admitted that during the solicitation of the letters, "[n]ot everyone was necessarily told it was going to be for a pardon."<sup>418</sup> Professor Verena Meyer, who serves on the board of the Doron Foundation, stated that she did not know that her letter would be included in a pardon petition.<sup>419</sup> She thought the letters were "routine" and "assume[d] other members of the foundation also wrote letters."<sup>420</sup>

Several others who wrote letters on behalf of Rich felt even more deceived. Professor Jonathan Halevy, CEO of the Shaare Zedek Medical Center in Jerusalem, wrote a letter on November 30, 2000, acknowledging contributions from Marc Rich's Doron Foundation. Halevy was contacted by Avner Azulay and asked to write a letter acknowledging the contribution.<sup>421</sup> According to Halevy, Azulay told him that the letter would be used in a "book in honor of Mr. Rich and the foundation."<sup>422</sup> When interviewed about his letter being used in Rich's pardon application, Halevy stated, "I'm obliged, if I got a donation from someone, to confirm that I got it in writing. But I think it would be very fair to tell me this was the purpose."<sup>423</sup> Anthony J. Cernera, President of Sacred Heart University, in Fairfield, Connecticut, was similarly misled about his letter. Cernera wrote Rich to "express my deepest appreciation for your on-going support for our program of Christian-Jewish understanding."<sup>424</sup> When the director of public relations for the University discovered that Cernera's letter was included in the pardon petition, he was astonished, responding, "Wow. So these letters were used as part of the petition for his pardon?"<sup>425</sup>

The fact that Avner Azulay and others on the Marc Rich team misled individuals to obtain letters of support from them suggests a level of dishonesty that calls into question all representations made by the Rich pardon team. It also suggests that a number of people affiliated with Marc Rich, many of whom received his money, would not have written in his support if they had known that their letter was being used to get a pardon.

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<sup>418</sup> Alison Leigh Cowan, *Some Used in Pardon Effort Were Unaware of Purpose*, N.Y. TIMES, Jan. 26, 2001, at A15.

<sup>419</sup> Elizabeth Olson, *Pardon in U.S. for Marc Rich Creates Storm in Switzerland*, N.Y. TIMES, Feb. 4, 2001, at 11.

<sup>420</sup> *Id.*

<sup>421</sup> Alison Leigh Cowan, *Some Used in Pardon Effort Were Unaware of Purpose*, N.Y. TIMES, Jan. 26, 2001, at A15.

<sup>422</sup> *Id.*

<sup>423</sup> *Id.*

<sup>424</sup> Letter from Anthony J. Cernera, President, Sacred Heart University, to Marc Rich (Nov. 27, 2000) (Exhibit 70).

<sup>425</sup> Alison Leigh Cowan, *Some Used in Pardon Effort Were Unaware of Purpose*, N.Y. TIMES, Jan. 26, 2001, at A15. In fact, when reached by *The New York Times*, only one of six letter writers were aware that their letters would be used as part of a pardon effort.

### **3. Many of the Letters were Misrepresented to the President**

Finally, the letters included in the pardon petition are further compromised by the way in which they were presented to President Clinton. The second section of the petition containing these letters was divided into two parts, one entitled “Letters Addressed to the Honorable President William J. Clinton Expressing Support for the Pardon of Mr. Marc Rich,” and another entitled “Letters Expressing Support for the Pardon of Marc Rich.” Both of these titles are misleading.

All of the twenty-one letters in the first part of this section were addressed to President Clinton. However, several of these letters made no mention of Marc Rich’s request for a pardon or executive clemency. Among the letters that included no reference to the pardon issue were those written by Nobel Laureate Camilio Jose Cela, Chief Rabbi of France; Rene-Samuel Sirat, President of the Jewish Community of Madrid; Issac Querub Caro; and President of the Association of Spanish Business Enterprises Fernando Fernandez Tapias. These letters all refer to Rich’s philanthropic contributions over the years. But none of them makes any reference to the pardon. It is therefore misleading for such letters to be included under the cover page indicating that all of the writers are expressing their support for a pardon.

The cover page for the second part of this section of the petition is even more problematic. There are fifty-two letters included under the title “Letters Expressing Support for the Pardon of Mr. Marc Rich.” Not one of these letters makes any mention of the pardon effort. Almost all of these letters were addressed to Marc Rich or Avner Azulay, thanking them for the generosity of Marc Rich and his foundations. Furthermore, based on the fact that most of these letters were written in late November and early December of 2000, it is clear that they were solicited by the Rich team for use in the pardon. However, as discussed above, their use in the pardon application came as a surprise to many of the letter writers. It stands to reason, therefore, that most of the writers were not informed of the purpose of the letters, let alone that they would be sent to President Clinton in such a misleading format.

There is also disturbing evidence that a more accurate title for these letters was considered, but not used, in the application. Among the materials produced for the Committee was an earlier draft of the same document, containing the same list of names, but with a different header reading “List of Letters of Support for Marc Rich and Foundation.”<sup>426</sup> The existence of this more accurate title makes it much less likely that the use of the inaccurate and misleading title was a mere oversight by the Rich team. Lawyers billing many hundreds of dollars an hour certainly should not make such errors, and circumstantial evidence makes it appear that they were simply trying to mislead. Given the rejection of an accurate title, and the fact that it was replaced with an inaccurate title, there can be no other reasonable conclusion. Moreover, when the Committee confronted Jack Quinn about the misleading cover page that was included in the pardon petition, he stated:

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<sup>426</sup> Compare Jack Quinn Document Production (Document entitled “List of Letters of Support for Marc Rich and Foundation”) (Exhibit 71), with Petition for Pardon for Marc Rich and Pincus Green, Document entitled “Letters Expressing Support for the Pardon of Mr. Marc Rich” (Dec. 11, 2000) (Exhibit 72).

I don't know who made that change. And I accept responsibility for anything filed in my name. I will tell you that, for the most part, I was not involved in the effort to gather these letters. I became aware after the petition had been filed that some of these letters were simply sought as testimonials to his charitable activities and that some of the people from whom they were sought were not told in advance that these letters were going to be used from a pardon application. I very much regret that. And to the extent that, as a result, any of that was misunderstood or was misleading, I certainly apologize for it.<sup>427</sup>

The deceptive tactics used by the Rich team in securing and presenting so many of the letters sent to President Clinton in the pardon application are disturbing. The Committee is also troubled by the fact that the Clinton Administration failed to take the time to review these letters and the misleading way in which they were presented. However, in the context of the rush to grant last-minute pardons, and all of the unfortunate decisions made during the pardon process, the dishonest use of these letters is not surprising. The misleading presentation of the letters is consistent with the misleading legal arguments that form the basis of the Rich and Green pardon petition.

#### **IV. LOBBYING FOR THE MARC RICH PARDON**

##### **A. The Marc Rich Lobbying Team**

Marc Rich employed much more than Jack Quinn and a deceptive petition to obtain his Presidential pardon. Just as important to the pardon effort was a carefully orchestrated lobbying campaign that used a number of individuals with unique access to the Clinton White House. Rich employed private attorneys with personal relationships with White House staff, personal friends of the President, and foreign leaders to press his case with the White House. The key players in the lobbying effort included Denise Rich, Beth Dozoretz, Israeli Prime Minister Ehud Barak, as well as other Israeli leaders, King Juan Carlos of Spain, Michael Steinhardt, Peter Kadzik, and a number of other individuals, all working for the same goal, the pardon of Marc Rich and Pincus Green.

##### **1. Denise Rich**

Denise Rich was in many ways the key figure in the effort to obtain a pardon for Marc Rich. She enjoyed a close relationship with President Clinton, which gave the Rich team the access they needed to make their case directly to the President. She used this access as much as she could, sending two letters to the President, and making her case to him personally on at least three occasions. Denise Rich's involvement in the pardon effort has raised three serious questions: (1) why did Denise Rich agree to help Marc Rich; (2) what were the nature of her communications with President Clinton; and (3) did she in any way connect the pardon of Marc Rich to contributions she had made or would make to the DNC or Clinton Library? The Committee has not been able to find definitive answers to these critical questions, largely because Denise Rich has invoked her Fifth Amendment rights against self-incrimination rather

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<sup>427</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 172 (Feb. 8, 2001) (testimony of Jack Quinn).

than cooperate with the Committee. To attempt to understand Denise Rich's role in helping to obtain Marc Rich's pardon, the Committee has considered documents about the pardon effort, testimony provided by other individuals, and even Denise Rich's self-serving media appearances.

**a. Denise Rich's Relationship with Marc Rich**

Denise Rich was wealthy before she married Marc Rich. She was the daughter of Emil Eisenberg, who founded Desco Incorporated, one of the largest shoe manufacturers in the United States. In 1966, at the age of 22, Denise married Marc Rich, whom she had met six months earlier. Denise Rich was married to Marc Rich for the next 25 years, having three children. In 1983, when Marc Rich was indicted and fled the country, Denise and her children left the United States with Marc Rich. Despite the fact that she accompanied her husband into exile, and remained with him there for the next eight years, Denise Rich claims to have been ignorant of the reasons for Rich's indictment and flight:

Question: In 1980, were you aware that your husband was reportedly trading with Iran after we had an embargo because of the hostages?

Denise Rich: I really didn't know much about that at all because I was so involved in my life. It's not like he would come home and he would say, "Hey, I'm trading with the enemy." We didn't talk about it.

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Question: How did you find out [about the indictment] and what was your reaction?

Denise Rich: All I really knew was that he spoke to me and he said that "I'm having tax problems with the government. And — and I think that we are going to have to leave." And my response was, "I am his wife. These are my children. I'm not going to split up the family." And, so, I did what I think any wife would do. I left the country.

Question: Did you understand that by fleeing to Switzerland and refusing to return to this country, that your husband was considered one of the 10 most wanted fugitives in America?

Denise Rich: That had nothing to do with me because I was...

Question: Yes. It's your husband, Denise. It's the father of your children.

Denise Rich: Yes, he's the father of my children...

Question: He's a fugitive.

Denise Rich: ...and he was my husband, but as far as I knew, it was a tax situation. So I really never understood anything else. And I really didn't — that's all that I knew.<sup>428</sup>

While living in exile, Denise began her musical career, becoming a successful songwriter. In approximately 1990, Denise discovered that Marc Rich had taken up with a younger woman, model Gisela Rossi. In 1991, Denise divorced Marc Rich. In the ensuing legal battle, she received a substantial sum of money, which has never been disclosed by Marc Rich, Denise Rich, or their representatives, but is believed to be in the vicinity of \$500 million.<sup>429</sup> As a result of the divorce, Denise and Marc Rich were reportedly on very poor terms, rarely speaking.

In 1996, however, the Richs' daughter Gabrielle died of AML leukemia. Denise Rich has often pointed to Gabrielle's death as an important factor in her change of heart regarding her ex-husband. First, she has claimed that Marc Rich was "cruelly denied the opportunity"<sup>430</sup> to return to the U.S. to visit her. She has also claimed that the death of Gabrielle caused her to forgive her ex-husband for his transgressions:

Question: Here is what a lot of people don't understand. How do you go from almost hating your husband at the time of the divorce to writing a letter pleading for his clemency and his pardon? What changed in your mind?

Denise Rich: My daughter died. And when you've lost a child, there's nothing more you can say. There are no more questions. When you've lost a child, everything changes, and I felt — I felt in my heart forgiveness.<sup>431</sup>

This explanation, however, fails to address one fundamental issue: should Marc Rich have decided to spend time with his daughter, he could easily have done so. Rather, he placed his legal jeopardy ahead of his concerns for his family and elected to refrain from visiting her. Years later, it appears that he and his ex-wife would cynically use the death of his daughter to gain sympathy for his earlier transgressions.

#### **b. Denise Rich's Relationship with President Clinton**

After her divorce from Marc Rich, Denise Rich returned to New York, where she purchased what is reportedly the largest penthouse on Fifth Avenue, a 28-room triplex filled with works of art by Picasso, Miro, Dali, Calder, Warhol, and Chagall, as well as a staff of 20 to serve her needs, including two cooks, a stylist, and a "personal healer."<sup>432</sup> Shortly after arriving in

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<sup>428</sup> 20/20 (ABC television broadcast, Apr. 27, 2001).

<sup>429</sup> Some estimates list the amount as high as \$900 million. See *Debunking the Buzz Over Denise*, N.Y. POST, Feb. 1, 2001, at 10.

<sup>430</sup> Jack Quinn Document Production (Letter from Denise Rich to President William J. Clinton (Dec. 6, 2000)) (Exhibit 73).

<sup>431</sup> 20/20 (ABC television broadcast, Apr. 27, 2001).

<sup>432</sup> Lloyd Grove, *The Reliable Source*, WASH. POST, Apr. 27, 2001, at C3.

New York, Denise Rich sought to establish herself as a leading figure in New York social circles. Geraldo Rivera, a close friend of Denise Rich, observed that “[t]he people who think she wants to be a kind of Pamela Harriman person are not off the mark. . . . She wanted a salon, she wanted a Gertrude Stein, Paris kind of scene, she wanted to watch the parade of contemporary popular cultural life march through her living room.”<sup>433</sup>

An important part of becoming a “kind of Pamela Harriman” was to get involved in political fundraising. Denise Rich began making large political contributions and holding lavish fundraisers shortly after her return to the United States. Denise Rich and her daughters gave over \$1.1 million to federal political causes between 1993 and 2000, all but \$5,000 of that to Democrats. Denise Rich’s political contributions increased as the end of the Clinton Administration neared, with over \$625,000 of her contributions coming between 1998 and 2000.

While she was giving and raising vast amounts of money for the Democratic Party, Denise Rich developed a close relationship with President Clinton:

When I met him there was so much charisma, and I saw a lot of idealism, and eventually I had a very special relationship with the former President and the former First Lady because they were so compassionate to me when I lost my daughter. And it — and it was as if he understood and . . . could put himself in my shoes.<sup>434</sup>

This special personal relationship was also manifested in Denise Rich’s political fundraising, where she became one of the Democratic Party’s largest and most reliable fundraisers. In fact, Denise Rich held the fundraiser that was President Clinton’s first public appearance after the publication of the Independent Counsel’s referral in 1998. It raised nearly \$3 million.<sup>435</sup>

Denise Rich’s special relationship with President Clinton was also manifested in her large contributions to the William J. Clinton Presidential Foundation, the charitable foundation responsible for building the Clinton Library. Between 1998 and 2000, Denise Rich gave \$450,000 to the Clinton Library.<sup>436</sup> Among these contributions was a \$250,000 gift in July 1998, which was one of the earliest large contributions to the Library, made during one of the darkest times in the Clinton presidency.<sup>437</sup> Because she and her friend Beth Dozoretz have used the Fifth Amendment to avoid answering the Committee’s questions, little is known about Denise Rich’s motivations for contributing to the Clinton Library. However, one document suggests that Denise Rich was seeking “help” from Dozoretz. On a note accompanying her \$100,000 library

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<sup>433</sup> Elisabeth Bumiller, *Tossed Into a Tempest Over a Pardon; Friends See Naivete, Critics a Payoff in a Clinton Fund-Raiser’s Acts*, N.Y. TIMES, Feb. 2, 2001, at B1.

<sup>434</sup> 20/20 (ABC television broadcast, Apr. 27, 2001).

<sup>435</sup> Elisabeth Bumiller, *Tossed Into a Tempest Over a Pardon; Friends See Naivete, Critics a Payoff in a Clinton Fund-Raiser’s Acts*, N.Y. TIMES, Feb. 2, 2001, at B1.

<sup>436</sup> See William J. Clinton Presidential Foundation Document Production WJCPF 0002 (Check from Denise Rich to the Clinton Library for \$250,000 (July 15, 1998)); William J. Clinton Presidential Foundation Document Production WJCPF 0008 (Check from Denise Rich to the Clinton Library for \$100,000 (Aug. 7, 1999)); William J. Clinton Presidential Foundation Document Production WJCPF 0031 (Check from Denise Rich to the Clinton Library for \$100,000 (May 11, 2000)) (Exhibit 74).

<sup>437</sup> *Id.*



contribution, Denise Rich wrote, “Dear Beth, Thanks for your help, Lots of love, Denise.”<sup>438</sup> However, since both Rich and Dozoretz have refused to testify on grounds that their testimony would incriminate them, the Committee has not been able to develop an understanding of this note.

As Denise Rich helped President Clinton with his charity, he helped Denise Rich with hers. In 1998 and 2000, President Clinton attended fundraising galas for the G&P Charitable Foundation, which Denise Rich established to raise funds for cancer research.

### **c. Denise Rich’s Role in the Marc Rich Pardon Effort**

Little is known about when Denise Rich decided to assist the Marc Rich pardon effort, or who asked her to help.<sup>439</sup> Avner Azulay has stated that he personally convinced her to write in support of the pardon, telling her that “everyone in the world is supporting this and you can’t just stand aside, it’s embarrassing.”<sup>440</sup> The first documentary evidence of her support for the effort to resolve Marc Rich’s criminal case appears in the March 2000 e-mail discussing sending her on a “personal mission” to President Clinton.<sup>441</sup> The first specific references to her role in the late 2000 pardon effort come in November 2000, in a meeting agenda prepared by attorney Robert Fink. The agenda for that meeting, which included Jack Quinn, includes an item “Maximizing use of D.R. and her friends.”<sup>442</sup> It appears that the first conversation between Denise Rich and the pardon team took place on December 4, 2000, when she spoke to Robert Fink.<sup>443</sup>

The Rich legal team did maximize use of Denise Rich. They started with a December 6, 2000, letter from Denise Rich to the President. This letter was in many ways, the centerpiece of the pardon petition. While it appears to have been a heartfelt plea, in reality, it was drafted by Marc Rich’s lawyers. The letter combines inaccurate charges about the indictment with emotional pleas about Rich’s “exile:”

I support his application with all my heart. The pain and suffering caused by that unjust indictment battered more than my husband — it struck his daughters and me. We have lived with it for so many years. We live with it now. There is no reason why it should have gone on so long. Exile for seventeen years is enough.

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<sup>438</sup> William J. Clinton Presidential Foundation Document Production WJCPF 0037 (Note from Denise Rich to Beth Dozoretz, former finance chair, Democratic National Committee) (Exhibit 75).

<sup>439</sup> There are reports that Denise Rich may have also assisted the effort to obtain a pardon for ex-boyfriend Niels Lauenzen, a prominent New York gynecologist who was convicted of fraudulent billing practices. According to one account, though, Rich was approached to help with Lauenzen’s pardon effort, and was willing to help, until she was “reminded that she might be spreading herself thin.” See James Barron with Alison Cowan and Shaila Dewan, *A Second Pardon Front*, N.Y. TIMES, May 15, 2001, at B2.

<sup>440</sup> *Rich’s Israeli Aide: The Pardon Surprised Us. So did the Furor*, FORWARD, (Feb. 23, 2001), at 1.

<sup>441</sup> There is some circumstantial evidence of reconciliation between Denise Rich and Marc Rich somewhat earlier, at least in November 1999, when Denise Rich and her daughter Danielle traveled to Israel to attend the dedication of the Gabrielle Rich wing of the Tel Aviv Museum of Art, which was funded by Marc Rich. A photograph of that event shows Denise and Danielle Rich posing with one of Marc Rich’s closest aides, Avner Azulay.

<sup>442</sup> Arnold & Porter Document Production A0567–69 (Agenda of Nov. 21, 2000, Meeting) (Exhibit 76).

<sup>443</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00021 (Billing Records for Marc Rich, Dec. 19, 2000) (Exhibit 77).

So much of what has been said about Marc as a result of the indictment and exile is just plain wrong, yet it has continued to damage Marc and his family.

\* \* \*

My husband and I could not return to the United States [sic] because, while the charges were untrue, no one would listen — all the prosecutors appeared to think about was the prospect of imprisoning Marc for the rest of his life. With a life sentence at stake, and press and media fueled by the U.S. Attorney, we felt he had no choice but to remain out of the country.

Let no one think exile for life is a light burden. The world we cared about was cut off from us. When our daughter was dying from leukemia, Marc was cruelly denied the opportunity to see her by the prosecutors.

What was this exile for? The charges all relate to old energy regulations, where all of the other people and companies involved in the same kinds of transactions were never charged with a crime. Only my husband was treated differently.<sup>444</sup>

This letter was placed prominently at the front of the stack of testimonials in the Marc Rich pardon petition, and it was quoted extensively in the petition itself. Of course, the arguments in the letter were completely inaccurate.

After including the letter in the pardon petition, Denise Rich took a number of other actions to lobby for the pardon. Another letter from her to President Clinton was prepared by Marc Rich's lawyers on December 20, 2000. This letter was discussed among the Marc Rich legal team, with Robert Fink suggesting the following text: "Because I could not bear it were I to learn that you did not see my letter and at least understand my special person[al] reasons for being a supporter of a pardon, I am sending you an additional copy, and an additional request that you wisely use your power to pardon Marc."<sup>445</sup> Jack Quinn thought that this language was "perfect,"<sup>446</sup> and suggested that Denise Rich should "hand it to him [the President] in [a] sealed envelope and mention that she is aware I intend to discuss the matter with him personally. She should simply ask him to read it later and let him know how strongly we feel that we have the merits on our side."<sup>447</sup> After Marc Rich's lawyers had finalized the text of the letter, it was presented to Denise Rich for her signature. Denise Rich did see the President on December 20, 2000, at a White House Christmas party. According to one witness at the party, Rich wrested the President away from Barbra Streisand to press her case about the pardon.<sup>448</sup>

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<sup>444</sup> Jack Quinn Document Production (Letter from Denise Rich to President William J. Clinton (Dec. 6, 2000)) (Exhibit 73).

<sup>445</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00068 (E-mail from Robert Fink to Kathleen Behan, Partner, Arnold & Porter *et al.* (Dec. 19, 2000)) (Exhibit 78).

<sup>446</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00069 (E-mail from Jack Quinn to Robert Fink *et al.* (Dec. 19, 2000)) (Exhibit 79).

<sup>447</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00397 (E-mail from Jack Quinn to Robert Fink *et al.* (Dec. 19, 2000)) (Exhibit 80).

<sup>448</sup> Alison Leigh Cowan, *Documents Show a Complex Campaign to Win a Pardon*, N.Y. TIMES, Feb. 10, 2001, at A11.

Little is known about how many other contacts Denise Rich might have had with President Clinton during the final month of the Clinton Administration. There is evidence that she had at least one, and maybe more, telephone calls with the President about the pardon. E-mails between Jack Quinn and Robert Fink on January 16, 2001, indicate that they wanted Denise Rich to make “another call,” indicating there had been other calls before this one. First, Quinn wrote that:

I am advised that it would be useful if she [Denise] made another call to P. I am in a fannie mae bd mtg, but would like to set this in motion asap. Message shd be simple: “I’m not calling to argue the merits. Jack has done that, and we believe a pardon is defensible and justified. I’m calling to impress upon you that MR and our whole family has paid a dear price over 18 yrs for a prosecution that shd never have been brought and that singled out MR while letting the oil companies he dealt with go scot free. Please know how important this is to me personally.” can you or avner call her this morning?<sup>449</sup>

Fink responded:

I called at 10:30 AM and she is still asleep (she was at her Dad’s yesterday and it was a very full day) but I left a message that I had to talk to her before a noon meeting. I expect I will hear from her and I will give her the message.<sup>450</sup>

In the absence of cooperation from Denise Rich, however, it is impossible to know exactly how many contacts Rich had with President Clinton, and what those contacts were about. An e-mail from Jack Quinn to Robert Fink’s assistant shortly after the pardon raises interesting questions. This document was withheld from the Committee for over a year, and was produced only after a decision from a federal district court judge requiring it to be turned over to a grand jury. Quinn wrote the following in response to an e-mail titled “One of the Reporters’ Requests:”

Shd def confirm it didn’t. Is this the moment to say that he asked DR for pol support? Or might DR have said something stupid like that when they spoke. God knows, I hope not.<sup>451</sup>

The Committee requested an interview with Jack Quinn after it received this e-mail, but he refused. Without further illumination from Quinn, this e-mail’s meaning is not clear. One interpretation suggests that a reporter may have called asking whether the President asked Denise Rich for “political support,” perhaps in the context of their discussions about the Rich pardon. It also suggests that Quinn was fearful that Denise Rich might have said something like this to the press. Quinn’s question “is this the moment to say that he asked DR for pol support,” raises a

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<sup>449</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00167 (E-mail from Jack Quinn to Robert Fink *et al.* (Jan. 16, 2000)) (Exhibit 81).

<sup>450</sup> *Id.*

<sup>451</sup> Jack Quinn Document Production JQ 02958 (E-mail from Jack Quinn to Rosemary Micciulli, Quinn Gillespie & Associates (Jan. 24, 2001)) (Exhibit 82).

real question as to whether President Clinton asked Denise Rich for “political support” in the midst of their discussions about the Rich pardon. While Quinn has refused to answer questions from the Committee about this e-mail, his spokesman has informed the press that the “he” in the e-mail refers to former New York Mayor Rudy Giuliani, not President Clinton.<sup>452</sup> While Quinn’s explanation is possible, it is troubling that Quinn has refused to provide this explanation to the Committee himself. Absent further information from Quinn, Denise Rich, or President Clinton, the Committee can only speculate as to the meaning of this e-mail.

It is clear that Denise Rich had frequent opportunities to press the pardon case with President Clinton. Rich was scheduled to visit the White House 19 times during the Clinton presidency, with six of those visits scheduled between May 2000 and January 2001.<sup>453</sup> In addition, Rich also called the White House on several occasions near the end of the Clinton Administration.<sup>454</sup> However, without cooperation from Denise Rich or President Clinton, the Committee is unable to know what was discussed during those telephone calls or how many of those scheduled White House visits actually occurred.

#### **d. Denise Rich’s Motives**

Denise Rich’s involvement in the Marc Rich pardon effort raises a number of serious questions: (1) why did Denise Rich agree to help Marc Rich; (2) did Denise Rich’s extremely large political contributions play any role in the President’s decision to grant the pardon of Marc Rich; (3) were additional large contributions envisioned or hoped for; (4) what did the President and Denise Rich discuss; and (5) was Denise Rich making her political contributions with her own money? Due to Denise Rich’s decision to invoke her Fifth Amendment rights against self-incrimination, the Committee is not able to answer any of these questions definitively. However, there are a number of factors suggesting that Denise Rich’s involvement in the Marc Rich pardon case is far more complicated than she has suggested.

First, Denise Rich’s explanation for why she helped Marc Rich obtain the pardon does not withstand full scrutiny. Denise Rich has stated that she helped him because, after her daughter died, she forgave Marc Rich for his transgressions. She also claimed that she helped get the pardon so that her daughters could be with their father again. However, the Committee is unaware of Rich returning to the United States since he has obtained the pardon. Moreover, during Marc Rich’s self-imposed “exile,” his daughters were free to visit him in Europe and Israel, as they often did. Since Denise Rich’s explanations do not fully explain her involvement, it is fair to consider other possible motivations. One comes from the fact that Rich promised to give \$1 million a year to the G&P Charitable Foundation, at the precise time that he was trying to get Denise Rich to help with the pardon effort.<sup>455</sup> This sum would have represented a major influx of cash for the G&P Foundation, which raised \$2.4 million in 1998 and only \$978,000 in

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<sup>452</sup> Michael Isikoff, *Secret E-Mail*, NEWSWEEK (Mar. 10, 2002).

<sup>453</sup> National Archives and Records Administration Document Production (WAVES records (1994–2000)).

<sup>454</sup> See, e.g., Verizon Document Production (Telephone calls from Denise Rich to the White House (Dec. 9, 1999)); Qwest Document Production (Telephone call from Denise Rich to the White House (Feb. 16, 2000)).

<sup>455</sup> Alison Leigh Cowan, *Rich Pardon Reportedly Followed Pledge to Charity of Former Wife*, N.Y. TIMES, May 1, 2001, at A1. \$500,000 of this sum would have been given by Marc Rich and the other \$500,000 would have been given by Pincus Green.

1999.<sup>456</sup> Second, the Committee has attempted to examine whether Denise Rich and her daughters continue to receive financial support from Marc Rich, or would receive enhanced financial support in the future, other factors which could have influenced their decision to support his pardon. While Denise Rich's bank records do not indicate any influx of money from Marc Rich, at least one document received by the Committee suggests that Rich might have established a Swiss bank account for his daughter Ilona. In a December 4, 2000, letter from Robert Fink to Ilona Rich, Fink wrote "here are some banking papers to set up the account with UBS for you that need your signature. Please execute where indicated and also return these to me so I can send them back to Switzerland."<sup>457</sup> While this reference is certainly capable of multiple interpretations, it at least raises the possibility that Marc Rich was providing untraceable funds to his family through Swiss bank accounts. This could provide another explanation for their support for the pardon.

Similarly, the Committee is unable to reach any firm conclusions regarding the nature of Denise Rich's communications with the President, and specifically whether Denise Rich's political contributions and contributions to the Clinton Library played any role in the pardon. Absent true cooperation from Denise Rich or President Clinton, there is no way of knowing what they discussed, or what they were thinking about the Marc Rich pardon. However, there are a number of pieces of circumstantial evidence that raise the indelible appearance of impropriety in this case, which Denise Rich and President Clinton have done nothing to refute. First, Denise Rich made \$1.1 million in political contributions to Democrats, including the Clintons, and the contributions increased dramatically toward the end of the Clinton Administration. Denise Rich also made \$450,000 in contributions to the Clinton Library, including one of the earliest large contributions to the Library. Although this sum has been downplayed, it was in fact an appreciable percentage of cash actually advanced to the Library. Given the difficulties generally experienced raising money after a President leaves office, the individuals who are prepared to give large sums — particularly after there are no more elections to finance — assume a particular importance. Second, Denise Rich used the relationship she had with the President, which was built in large part of political contributions, to lobby the President to grant the pardon. Third, Denise Rich and Beth Dozoretz, the two people who were privy to the reasons for Denise Rich's political contributions and her discussions with the President regarding the pardon, were so concerned about their potential criminal exposure that they invoked their Fifth Amendment rights. Were there a benign explanation to the events prior to the pardon, there is little conceivable reason to have invoked the Fifth Amendment. Fourth, the President, Denise Rich, and Beth Dozoretz have offered the weakest of justifications for their actions in the Marc Rich pardon matter. Given these facts, there is an unmistakable appearance of impropriety.

The Committee had the opportunity to grant Denise Rich immunity against prosecution so that it could receive compelled testimony from her, but decided not to proceed with a grant of immunity for several reasons. First, there was no evidence that Denise Rich intended to cooperate with the Committee. After the Committee received notice that the Justice Department

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<sup>456</sup> See Department of the Treasury Form 990-PF, G&P Charitable Foundation, 1998; Department of Treasury Form 990-PF, G&P Charitable Foundation, 1999 (Exhibit 83). A copy of G&P's tax return for the year 2000 was unavailable because the Foundation may have received a filing deadline extension.

<sup>457</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00259 (Letter from Robert Fink to Ilona Rich (Dec. 4, 2000)) (Exhibit 84).

had no objection to a grant of immunity, Committee staff contacted counsel for Mrs. Rich, to determine whether they would offer the Committee a proffer before the immunity vote. By receiving a proffer, the Committee hoped to receive an understanding of what Mrs. Rich would testify to if she received immunity. Counsel for Mrs. Rich were unwilling to provide a proffer. By refusing to provide a proffer, counsel for Mrs. Rich made it clear that they had no intent of cooperating with the Committee's investigation, and would make obtaining information from Denise Rich as difficult as possible.

Another factor that played a role in the Committee's decision not to grant immunity to Denise Rich were Mrs. Rich's own public statements about her role in the investigation. When Mrs. Rich appeared on the television program 20/20, to the extent she made any statements addressing her role in the pardon, her statements were difficult to believe. This appearance raised real questions as to whether Denise Rich intended to provide honest and complete testimony to the Committee, even if she were immunized.

## **2. Beth Dozoretz**

Together with Denise Rich and Jack Quinn, Beth Dozoretz served a key role in lobbying for the pardon of Marc Rich. Like Denise Rich, Dozoretz enjoyed a close personal relationship with President Clinton that was a mixture of friendship and extremely significant political fundraising. Like Denise Rich, Dozoretz took advantage of this close relationship to press President Clinton about the Rich pardon. Also, much like her friend Denise Rich, Beth Dozoretz has invoked her Fifth Amendment rights rather than testify before the Committee.

### **a. Beth Dozoretz's Relationship with Bill Clinton**

In 1992, Beth Dozoretz attended the Democratic Convention in New York City at the urging of her husband, Ron Dozoretz. Until that point, Dozoretz had never been significantly involved in political events of any type. But at the Democratic convention, Dozoretz had an epiphany of sorts, as Hillary Clinton passed by:

On her way to the podium she had to walk by where I was sitting. . . . She was looking around, smiling, and I flattered myself to think that our eyes met. And I blurted something out like, "I just think you're fabulous!" And I felt like she looked at me and said, "Thank you!" with her big, beautiful smile.<sup>458</sup>

Beginning with the 1992 convention, Beth Dozoretz began to be deeply involved in Democratic politics. She and her husband moved to Washington from Norfolk, Virginia, in 1993. First at an apartment in Georgetown and then at an estate in Northwest Washington, the Dozoretzes began to host high-profile fundraising events. Through these events, the Dozoretzes had frequent contact with the Clintons, and struck up a warm relationship with both the President and First Lady. During the course of the Clinton presidency, the Dozoretzes were close to the Clintons,

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<sup>458</sup> Lloyd Grove, *The A-List's No. 1 Political Partiers; How Beth and Ron Dozoretz Made Washington Their Very Own*, WASH. POST, Apr. 1, 1999, at C1.

vacationing with them, and playing golf with them.<sup>459</sup> Like Denise Rich, Beth Dozoretz remained close to the President throughout the Monica Lewinsky scandal. In November 1998, the Dozoretzes asked the President to serve as godfather to their infant daughter.<sup>460</sup>

In addition to the close personal relationship she maintained with President Clinton, Beth Dozoretz also developed a fundraising relationship with the President. In 1994, Dozoretz served as co-Chairman of the DNC's large contributor program. By 1999, Dozoretz had raised \$5 million for various Democratic causes.<sup>461</sup> As a result, in early 1999 Dozoretz was appointed, with the President's personal blessing, as Finance Chairman of the DNC, the chief fundraiser for the Democratic Party. Dozoretz resigned her post in September 1999, to allow new DNC Chairman Ed Rendell to appoint his own Finance Chairman. However, even after she left her position as Finance Chairman, Dozoretz continued to raise funds for the Democratic Party, and maintain a warm relationship with President Clinton.

In addition to raising funds for the DNC, Beth Dozoretz raised money for President Clinton's personal causes. For example, she raised money for the President's legal defense fund. She also raised money for the Clinton Library. Dozoretz solicited Denise Rich for her first contribution to the Clinton Library, a \$250,000 contribution made in July 1998.<sup>462</sup> Apparently, Rich gave the check to Dozoretz, who sent it on to the lawyers for the Library.<sup>463</sup> In connection with this, or one of Denise Rich's other contributions to the Clinton Library, Rich drafted a note to Dozoretz reading "Dear Beth, Thanks for your help, Lots of love, Denise."<sup>464</sup> Apparently, Denise Rich was a person specifically targeted by Dozoretz to solicit for the Clinton Library. Dozoretz gave Peter O'Keefe, the chief fundraiser for the Clinton Library, a list of individuals

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<sup>459</sup> *Id.* The Dozoretzes had their critics, some of whom suggested that their friendship with the Clintons was the result of a deliberate plan:

Starting from the very beginning, they were having dinners and soirees at their apartment in Washington Harbour....The whole program was geared to rising to the top. She had a staff from the very first day. I mean, how many housewives have staffs? She played golf with the president, and she took golf lessons so she could play with him. Her husband obviously is very, very wealthy, and this is something they set out to accomplish. And obviously they have.

*Id.*

<sup>460</sup> *Id.* President Clinton agreed, and he and Hillary Clinton attended a high-profile christening at the Dozoretz estate. The star-studded attendance list for the event also included Jack Quinn. Annie Groer and Ann Gerhart, *The Reliable Source*, WASH. POST, Nov. 12, 1998, at C3.

<sup>461</sup> It was through her fundraising work for the DNC that Beth Dozoretz became enmeshed in her first White House scandal. In September 1997, Dozoretz testified before the Senate Committee on Governmental Affairs regarding a controversial White House fundraising coffee attended by John Huang and Pauline Kanchanalak. Two witnesses at the coffee testified that Huang made an illegal appeal for political contributions at the White House coffee. Dozoretz, who was also attending the coffee with a prospective donor, denied that Huang made the remarks. See "Investigation into Fundraising Activities During the 1996 Elections," *Hearings Before the Senate Governmental Affairs Special Investigations Comm.*, 105th Cong. (Sept. 16, 1997).

<sup>462</sup> William J. Clinton Presidential Foundation Document Production WJCPF 0002 (Check from Denise Rich to the William J. Clinton Presidential Foundation Library for \$250,000 (July 15, 1998)) (Exhibit 74).

<sup>463</sup> William J. Clinton Presidential Foundation Document Production WJCPF 0004 (Letter from Janine Werkman, Chief of Staff for Beth Dozoretz, to Nicole Seligman (July 17, 1998)) (Exhibit 85).

<sup>464</sup> William J. Clinton Presidential Foundation Document Production WJCPF 0037 (Note from Denise Rich to Beth Dozoretz, former finance chair, Democratic National Committee) (Exhibit 75).

Dozoretz intended to solicit, and Denise Rich was listed on this document.<sup>465</sup> In addition to the substantial sums she raised from Denise Rich, on May 23, 2000, Beth Dozoretz pledged to raise \$1 million for the Clinton Library.<sup>466</sup>

### **b. Beth Dozoretz's Involvement in the Marc Rich Pardon Campaign**

Around Thanksgiving of 2000, Jack Quinn informed Beth Dozoretz that he would be filing a pardon petition on behalf of Marc Rich. Quinn was close friends with Dozoretz, and also knew that she was close to Denise Rich. Quinn testified that he “encouraged her to help me be sure that the President himself was aware of the fact that the application had been filed with the White House Counsel’s office.”<sup>467</sup> According to Quinn, Dozoretz did talk to the President, who told her that Quinn should make his case to Bruce Lindsey and the other staff in the White House Counsel’s office.<sup>468</sup> Quinn described his motivation for involving Dozoretz at the Committee’s March 1 hearing:

I did so because she was a friend of mine, because she had a relationship with Denise Rich, she was in much more frequent communication with the President than I was. I was motivated by two things principally; one, I was hopeful that she could let the President know that I had or was going to file this so that he would be aware it was there; and two, she was another person who I hoped might be in a position to give me the kind of information that I have, as a lawyer, thought would be useful to me to pursue their efforts on behalf of my client vigorously. Now, I want to also tell you have [sic] that in that conversation I had with her again around Thanksgiving time, I cautioned her that it would be very important to make sure that no such conversation was ever connected in any way with any kind of fundraising activity. She reacted to that by kind of looking at me like how could I even suggest that. She said to me, of course I would never do that to him.<sup>469</sup>

It is apparent that Quinn turned to Dozoretz because of her access to and influence with the President. Precisely how Dozoretz used these skills is a mystery, because of Dozoretz’s invocation of her Fifth Amendment rights.<sup>470</sup>

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<sup>465</sup> William J. Clinton Presidential Foundation Document Production WJCPF 0048 (List of Potential Contributors to William J. Clinton Presidential Foundation) (Exhibit 86); Interview with Peter O’Keefe, Fundraiser, William J. Clinton Presidential Foundation (Apr. 12, 2001).

<sup>466</sup> This information was provided to the Committee in a briefing by David Kendall and Nicole Seligman, counsel for the Clinton Foundation. *See also* William J. Clinton Presidential Foundation Document Production WJCPF 0024 (Letter from Skip Rutherford, President, William J. Clinton Presidential Foundation, to Beth Dozoretz, former finance chair, Democratic National Committee (Jan. 4, 2000)) (Exhibit 87).

<sup>467</sup> “President Clinton’s Eleventh Hour Pardons,” *Hearing Before the Senate Judiciary Comm.*, 107th Cong. 69 (Feb. 14, 2001) (testimony of Jack Quinn).

<sup>468</sup> *Id.*

<sup>469</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 410–11 (Mar. 1, 2001) (testimony of Jack Quinn).

<sup>470</sup> Irving Sandorf, a former colleague of Dozoretz’s from the clothing industry, noted that “She has a way of getting into you a little bit. She knows how to manipulate people. I don’t know if you’d call them ‘people skills.’ It’s more like ‘I’ll use you, you use me’ skills.” *See* Lloyd Grove, *The A-List’s No. 1 Political Partiers; How Beth and Ron Dozoretz Made Washington Their Very Own*, WASH. POST, Apr. 1, 1999, at C1.



Over the course of the next two months, Beth Dozoretz and Jack Quinn were in frequent contact about the Marc Rich pardon effort.<sup>471</sup> Jack Quinn estimated that they spoke between five and ten times about the Marc Rich pardon effort. The real question is, of course, how many times Beth Dozoretz spoke to the President about the Marc Rich pardon, and what they spoke about. Because of the Fifth Amendment claims of Dozoretz and Denise Rich, the Committee knows little about these communications. However, the e-mail discussions of the Marc Rich legal team offer some insight into the matter. On January 10, 2001, Avner Azulay e-mailed Jack Quinn with the following message:

2. D[enise] R[ich] called from aspen. Her friend B — who is with her — got a call today from potus — who said he was impressed by J[ack] Q[ui]nn's last letter and that he wants to do it and is doing all possible to turn around the WH counsels. D[enise] R[ich] thinks he sounded very positive but "that we have to keep praying." There shall be no decision this wknd and the other candidate Milik [sic] is not getting it.<sup>472</sup>

When questioned about this e-mail, Quinn confirmed that the "B" referred to by Azulay was indeed Beth Dozoretz.<sup>473</sup> However, Quinn could do little to explain the message, including why the President would be trying to convince the staff of the need for the pardon, rather than vice-versa. Robert Fink responded to this message with an e-mail stating, "I said it before, and I say it again, 'nice letter.' Keep on praying, and, oh, a few phone calls won't hurt."<sup>474</sup>

Dozoretz remained deeply involved in the Marc Rich pardon effort through the granting of the pardon. Three e-mail messages to Jack Quinn make it appear that Dozoretz was urgently trying to reach Quinn on January 17, 2001. At 12:13 p.m., Quinn's assistant informed him that "Beth Dozoretz wants you to call her on her cell if you get a chance."<sup>475</sup> At 1:38 p.m., Quinn's assistant told him that "Beth is very eager to talk to you. She called again and knows that you are at the WH."<sup>476</sup> A mere 24 minutes later, Quinn's assistant sent Quinn an e-mail regarding "BETH" stating "[v]ery sorry to bother you with this but she is insistent. Please call her — she says that it is URGENT."<sup>477</sup> On January 19, 2001, Dozoretz traveled to Beverly Hills,

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<sup>471</sup> Beth Dozoretz left telephone messages for Jack Quinn on: December 8, 2000; January 2, 2001, with the question, "[A]ny news on the matter?"; January 8, 2001; an undated message between January 8 and January 18, 2001; January 18, 2001; and January 19, 2001, leaving her contact information for the rest of that day. Jack Quinn Document Production (Telephone Messages from Beth Dozoretz, former finance chair, Democratic National Committee, to Jack Quinn) (Exhibit 88).

<sup>472</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00162 (E-mail from Avner Azulay, Director, Rich Foundation, to Jack Quinn *et al.* (Jan. 10, 2001)) (Exhibit 89).

<sup>473</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 246–48 (Feb. 8, 2001) (testimony of Jack Quinn).

<sup>474</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00162 (E-mail from Robert Fink to Jack Quinn (Jan. 10, 2001)) (Exhibit 89).

<sup>475</sup> Jack Quinn Document Production JQ 03027 (E-mail from April Moore, Secretary to Jack Quinn, Quinn Gillespie & Associates, to Jack Quinn (Jan. 17, 2001)) (Exhibit 90).

<sup>476</sup> Jack Quinn Document Production JQ 03028 (E-mail from April Moore, Secretary to Jack Quinn, Quinn Gillespie & Associates, to Jack Quinn (Jan. 17, 2001)) (Exhibit 91).

<sup>477</sup> Jack Quinn Document Production JQ 03029 (E-mail from April Moore, Secretary to Jack Quinn, Quinn Gillespie & Associates, to Jack Quinn (Jan. 17, 2001)) (Exhibit 92).

California, with her husband.<sup>478</sup> That day, she called Jack Quinn to let him know her contact information, both in her private jet, and at the Peninsula Hotel, where she would be staying.<sup>479</sup> At 10:48 p.m., Quinn called Dozoretz at the Peninsula Hotel.<sup>480</sup> Presumably, Quinn informed Dozoretz that he believed Marc Rich was going to receive a pardon. Shortly after that call, Dozoretz called the White House and spoke to President Clinton.<sup>481</sup> According to one press report, Dozoretz thanked President Clinton, but he was so busy that he did not initially understand why Dozoretz was thanking him.<sup>482</sup>

After the pardon was granted, Dozoretz continued her contacts with Jack Quinn. Between January 23, 2001, and February 5, 2001, Dozoretz called Quinn at least nine times, leaving messages of support such as (1) “NY Times was great today!”<sup>483</sup> (2) “You are getting a reputation as the smartest lawyer in America;”<sup>484</sup> (3) “Hearing lots of good things about you especially hearing that you are brilliant;”<sup>485</sup> and (4) “Just had important conversation she would like to share with you.”<sup>486</sup>

Beth Dozoretz’s efforts to help get Marc Rich’s pardon cast yet additional doubt on the motives of President Clinton. Like Denise Rich, Beth Dozoretz was a close personal friend of President Clinton. Also like Denise Rich, and a number of the President’s other close friends, her friendship was closely intertwined with her fundraising relationship for the President and Democratic Party.

Dozoretz’s involvement in the Marc Rich pardon effort has the indelible appearance of impropriety. Whether or not criminal acts were involved is unknown, and can only be discovered with facts not available to the Committee — namely the truthful testimony of Denise Rich and Beth Dozoretz. However, the appearance of impropriety is substantial:

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<sup>478</sup> WAVES records from the White House indicate that both Dozoretz and Denise Rich visited the White House on January 19, 2001. However, it appears that these records are spurious. White House WAVES records usually show a scheduled time of entry for any scheduled visit to the White House. However, only if a visitor actually shows up at the White House is an actual time of entry entered into the WAVES system. In this case, the WAVES records show actual times of entry for Rich and Dozoretz. The United States Secret Service, has explained, however, that a large group of individuals were scheduled to visit the White House at one time for a party. Rather than hold up the group of individuals who were actually there, the Secret Service waved through the entire group. Therefore, the WAVES system shows erroneously that everyone who was scheduled for that event actually showed up. Hotel records as well as several eyewitnesses confirm the fact that Dozoretz was in transit and in California on January 19. The fact that the United States Secret Service had no idea of who was actually admitted to the White House is obviously troubling.

<sup>479</sup> Jack Quinn Document Production (Telephone Message from Beth Dozoretz, former finance chair, Democratic National Committee, to Jack Quinn (Jan. 19, 2001)) (Exhibit 88).

<sup>480</sup> Jack Quinn Document Production (Quinn Gillespie telephone bill, Feb. 9, 2001) (Exhibit 93).

<sup>481</sup> Peninsula Hotel Document Production (Dozoretz Invoice from Peninsula Hotel, Jan. 21, 2001) (Exhibit 94).

<sup>482</sup> Corky Siemaszko, *Dem Aide Had Early Word of Pardons*, N.Y. DAILY NEWS, Feb. 26, 2001, at 6.

<sup>483</sup> Jack Quinn Document Production (Telephone Message from Beth Dozoretz, former finance chair, Democratic National Committee, to Jack Quinn (Jan. 25, 2001)) (Exhibit 95).

<sup>484</sup> Jack Quinn Document Production (Telephone Message from Beth Dozoretz, former finance chair, Democratic National Committee, to Jack Quinn (Jan. 29, 2001)) (Exhibit 96).

<sup>485</sup> Jack Quinn Document Production (Telephone Message from Beth Dozoretz, former finance chair, Democratic National Committee, to Jack Quinn (Jan. 31, 2001)) (Exhibit 97).

<sup>486</sup> Jack Quinn Document Production (Telephone Message from Beth Dozoretz, former finance chair, Democratic National Committee, to Jack Quinn (Feb. 1, 2001)) (Exhibit 98).

- Beth Dozoretz was herself a major fundraiser for the DNC as well as President Clinton's personal causes, including his legal defense fund and library. In addition, she was the primary solicitor for Denise Rich's contributions to the Clinton Library. Therefore, at a minimum, Beth Dozoretz's endorsement of a pardon carried particular weight with the President.
- The one communication between Dozoretz and President Clinton of which the Committee is aware raises serious questions. According to the e-mail describing the call, President Clinton told Dozoretz that he was "doing all possible to turn around the WH counsels." This upside-down construction suggests that the President had made up his mind to grant the pardon, but was hoping to convince the staff so as to improve appearances.
- No acceptable explanation has been made to the Committee of why Beth Dozoretz agreed to become involved in the pardon effort. Obviously, Dozoretz is friendly with both Denise Rich and Jack Quinn. It is possible that she agreed to help Rich and Quinn as part of this friendship.<sup>487</sup> However, given the substantial effort that Dozoretz made, and the excitement that she showed at the President's decision to grant the pardon, the possibility that Dozoretz had some other motivation should be considered.
- Rather than cooperate with the Committee's investigators, Dozoretz invoked her Fifth Amendment right against self-incrimination.

However, absent cooperation from Ms. Dozoretz, the Committee is unable to answer these questions.

**c. Jack Quinn's Attempt to Keep Information About Dozoretz from the Committee**

It should be noted that Jack Quinn apparently tried to keep the Committee from learning the true nature of Beth Dozoretz's role in the pardon effort. When Quinn was asked about the January 10, 2001, e-mail at the Committee's February 8, 2001, hearing, the Committee did not have any information regarding the role of Dozoretz in the pardon effort. When he was asked about the e-mail, Quinn did acknowledge that it referred to Beth Dozoretz, but he was then quite reticent about explaining Dozoretz's role:

Rep. Barr: Why would the President be sharing this information with the finance chair of the DNC? What do they have to do with it?

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<sup>487</sup> Of course, there are questions regarding why Denise Rich and Jack Quinn were making such great efforts to obtain the pardon. As described above, Rich has never adequately explained her motivations, leading to speculation that her motivation may have been financial, not personal. Jack Quinn's explanations have been even more suspect, as he has maintained that he was not expecting any payment for his work on the Marc Rich pardon effort. As described above, this suggestion is contradicted by common sense, as well as by Marc Rich's primary U.S. lawyer, Robert Fink. Fink confirms that Quinn's motivation was likely financial, as he was going to receive handsome financial compensation for his efforts. Because Quinn and Rich have offered weak reasons for their involvement in the Rich pardon effort, the motivations of individuals with even less at stake, like Beth Dozoretz, must be subjected to even greater scrutiny.

Mr. Quinn: I was on the receiving end of this e-mail, and I don't know the answer to that. I was aware of this e-mail.

Rep. Barr: Work with me, speculate a little bit, why would the DNC finance chair be involved here?

Mr. Quinn: Well, I believe — my impression was that Denise and Beth were — have been friends, and that, in fact, they grew —

Rep. Barr: I suspect so.

Mr. Quinn: That they grew up in the same town in Massachusetts up north.

\* \* \*

Mr. Quinn: But let me be clear, I don't know that he [the President] called her about this.

\* \* \*

Rep. Barr: Clearly it was about this.

Mr. Quinn: I believe that — my impression was that in the course of the conversation they were having she asked him what is happening with these two pardon applications, and apparently was with Denise Rich at the time, which may have motivated her to ask the President in the course of the conversation, but I was not of the impression, I want to be careful to say this accurately, that the call was placed for the purpose of discussing the pardons.<sup>488</sup>

Quinn's initial testimony on this point was misleading. When Representative Barr asked why the President would be calling Beth Dozoretz about the Rich pardon, Quinn answered "I don't know the answer to that." When Representative Barr asked Quinn to speculate about why Dozoretz was involved in this matter, the best Quinn could offer was that Denise Rich and Beth Dozoretz were friends, and had grown up in the same town in Massachusetts. Quinn neglected to mention the more salient point that he had personally asked Dozoretz to become involved in the pardon effort. Therefore, he knew specifically why she was discussing the Rich pardon with the President. However, at no time during the Committee's February 8 hearing did Quinn disclose the fact that he had specifically asked Dozoretz to become involved in the pardon effort, because of her close relationship with President Clinton. If the House Government Reform Committee and Senate Judiciary Committee had not held follow-up hearings on this matter, it is likely that Quinn never would have told the truth about Dozoretz's involvement. The fact that

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<sup>488</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 248 (Feb. 8, 2001) (statement of the Honorable Bob Barr and testimony of Jack Quinn).

Quinn tried to conceal this information only adds to the appearance that Dozoretz's role in the pardon was improper.

### **3. Israeli Prime Minister Ehud Barak and Other Israeli Leaders**

Key players in the lineup of individuals assisting the Marc Rich pardon effort were Israeli Prime Minister Ehud Barak and a number of other current and former Israeli officials who weighed in with the Clinton Administration. President Clinton has made much of the influence of Prime Minister Barak's appeal in his decision making. This claim can be debated. However, it cannot be debated that the Marc Rich team made a substantial effort to get these Israeli officials involved. However, much like some of the key American players, it is difficult to gauge whether these officials were involved because they believed in the Rich pardon, or because they received financial support from Marc Rich.

After he fled the United States in 1983, Marc Rich began to make large financial contributions to various charities in Israel, as well as Jewish charities in Europe and the United States. Marc Rich also made political contributions to Israeli political candidates. However, since Israeli law does not require the public disclosure of these contributions, the Committee is not able to determine to whom Rich has contributed. Communications among the Marc Rich legal team make it clear that they were able to call upon a number of prominent Israelis to weigh in on Rich's behalf with President Clinton.

Marc Rich's pardon petition included a number of letters of support from prominent Israelis, including: Shlomo Ben-Ami, the Minister of Foreign Affairs and Minister of Public Security; Itamar Rabinovich, the former Israeli Ambassador to the United States; Yaakov Neeman, the former Minister of Finance and former Minister of Justice; Ehud Olmert, the Mayor of Jerusalem; Isaac Herzog, the Israeli Government Secretary, and Shabtai Shavit, the former Director of the Mossad.<sup>489</sup> A number of these officials received some sort of financial contributions from Marc Rich. Olmert received a \$25,000 political contribution from Rich in 1993.<sup>490</sup> A community development organization called Yedid, which was linked to Shlomo Ben-Ami, received \$100,000 from Rich.<sup>491</sup> Herzog's wife worked for the Rich Foundation.<sup>492</sup>

More important than the letters of support, though, were telephone calls to President Clinton from some of these Israeli leaders. Most importantly, Marc Rich's supporters were able to have Prime Minister Ehud Barak raise the Marc Rich pardon with President Clinton. Prime Minister Barak described the approach to him by Avner Azulay as follows:

Few months ago [sic] I was approached by the chairman of the Rich Foundation in Israel. The chairman, Mr. Azoulay is a man I know [sic] for many years, who had contributed a lot to the security of the State of Israel. The Rich Foundation is

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<sup>489</sup> See Petition for Pardon for Marc Rich and Pincus Green (Dec. 11, 2000) (Appendix III).

<sup>490</sup> Michael Dobbs, *Pardon Smoothed Ties to Israel; Barak, Others Aided Rich's Campaign*, WASH. POST, Feb. 25, 2001, at A1.

<sup>491</sup> *Id.*

<sup>492</sup> *Id.*

well known and highly appreciated in Israel for its philanthropic activities in the fields of healthcare, education and culture.

Mr. Azoulay asked me to raise Mr. Rich case with President Clinton. I raised the subject with President Clinton several times (probably three) in the course of routine telephone conversations during the last two or three months of his presidency and made a personal recommendation to him to consider the case.<sup>493</sup>

Avner Azulay's efforts to enlist Israeli officials in the pardon effort were helped dramatically when, in early January 2001, Marc Rich himself flew to Israel to attend a convention for Birthright Israel, a recipient of Rich's largesse. While Rich was in Israel, he took the opportunity to meet senior Israeli political officials as well as Jewish-American leaders. During this trip to Israel, Rich met personally with Prime Minister Barak, and shortly after that meeting, Barak raised the Rich pardon with President Clinton a second time. Azulay referred to Rich's scheduled meetings in a January 4, 2001, e-mail to the Rich legal team:

As I have already mentioned — during this wknd [sic] M[arc] R[ich] is scheduled to meet the P[rime] M[inister], F[oreign] M[inister] & SH[imon] P[eres] — as well as a main vector to E[lie] W[iesel].

If possible it would be very useful to ask the W[hite] H[ouse] to hold the final decision (unless it is positive!) — until the above have the opportunity to make/repeat their personal appeals.<sup>494</sup>

It also appears that the Rich team attempted to have other Israeli officials call the President or his staff. Former Israeli Prime Minister Shimon Peres called President Clinton about the Marc Rich matter on December 11, 2000,<sup>495</sup> the day that the Rich petition was filed, and the same day that Prime Minister Barak spoke to the President. On December 19, 2000, Avner Azulay suggested that he ask Knesset Speaker Avraham Burg to call the President on Marc Rich's behalf.<sup>496</sup> It is unclear whether Burg actually spoke with President Clinton. Burg apparently did write a letter to President Clinton on January 9, 2001, advocating Rich's pardon.<sup>497</sup>

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<sup>493</sup> Letter from Ehud Barak, Prime Minister, Israel, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (May 13, 2001)) (Exhibit 99).

<sup>494</sup> Arnold & Porter Document Production A0865 (E-mail from Avner Azulay, Director, Rich Foundation, to Jack Quinn *et al.* (Jan. 4, 2001)) (Exhibit 100).

<sup>495</sup> Arnold & Porter Document Production A0842 (E-mail from Avner Azulay, Director, Rich Foundation, to Jack Quinn *et al.* (Dec. 25, 2000)) (Exhibit 101).

<sup>496</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00071 (E-mail from Avner Azulay, Director, Rich Foundation, to Kathleen Behan, Partner, Arnold & Porter *et al.* (Dec. 19, 2000)) (Exhibit 102).

<sup>497</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00163-64 (E-mail from Avner Azulay, Director, Rich Foundation, to Jack Quinn *et al.* (Jan. 11, 2001)) (Exhibit 103). While Burg's letter did expressly advocate Rich's pardon, it was criticized by Gershon Kekst and Bob Fink. Kekst asked Quinn and Fink "is this a helpful letter?" *Id.* Fink responded, "I think Potus will realize that it is intended to be helpful. Frankly, I am a little surprised Avner let it go in this form, as we pulled one like it from the original petition. Maybe he did not see it until after it had gone. I see no reason to rain on anyone's parade." *Id.*

Azulay also asked Israel Singer, Secretary General of the World Jewish Congress, and Edgar Bronfman, President of the World Jewish Congress, to raise the Marc Rich matter with the President:

Israel Singer & Edgar Bronfman (CEO & President of the World Jewish Congress) are scheduled to meet potus on Sunday evening in NY (the Israel Policy Forum — not adequate for a private talk) and on Wednesday for a private séance at the WH. In anticipation of Abraham Burg's meeting, I contacted Singer through Rabbi Rizkin. Burg will give his support only if he knows that Singer and Bronfman will . . . [sic] I don't know but suspect that this has to do with JPoll.

Now Singer wants to be sure that the MRPG petition is on the agenda of potus. I suggest you contact Israel Singer the soonest possible — either to brief him and answer his questions or arrange for a mtg with him before he meets potus.<sup>498</sup>

In his desperation to find prominent Israeli supporters for the Marc Rich petition, Jack Quinn even suggested that the deceased widow of assassinated Israeli Prime Minister Yitzhak Rabin, Leah, call President Clinton. Robert Fink made this request to Avner Azulay in an e-mail: “Oh one more thing. Jack asks if you could get Leah Rabin to call the President; Jack said he was a real big supporter of her husband.”<sup>499</sup> Azulay responded the following day: “Bob, having Leah Rabin call is not a bad idea. The problem is how do we contact her? She died last November — on the 5<sup>th</sup> anniversary of her husband's murder.”<sup>500</sup> In the end, the Rich team settled for the Rabins' daughter, who met with Avner Azulay on January 10, 2001, and informed him that she would call President Clinton on Rich's behalf.<sup>501</sup>

One of the tactics used by Azulay to enlist Israeli leaders was to link the Rich pardon to the Jonathan Pollard matter. The Pollard pardon had long been a priority for a number of Israeli officials, and Azulay attempted to use the Pollard matter to Rich's advantage:

I can also cfm [sic] the info on J[onathan] P[ollard]. It seems that the topic was discussed in telecons with potus — within the framework of the peace agreement. JP's freedom is considered as a public-political “sweet pill” which shall help swallow (or divert public attention from) the more sour pills in the agreement with arafat [sic]. I am sure potus is aware that JP is going to be big trouble with the entire intelligence community and MR could go along with it “less unnoticed”. On the other hand if he says no to JP — one more reason to say yes to MR.<sup>502</sup>

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<sup>498</sup> Arnold & Porter Document Production A0866 (E-mail from Avner Azulay, Director, Rich Foundation, to Jack Quinn *et al.* (Jan. 5, 2001)) (Exhibit 104).

<sup>499</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00091 (E-mail from Robert Fink to Avner Azulay, Director, Rich Foundation (Dec. 30, 2000)) (Exhibit 36).

<sup>500</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00094 (E-mail from Avner Azulay, Director, Rich Foundation, to Robert Fink (Dec. 31, 2000)) (Exhibit 105).

<sup>501</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00162 (E-mail from Avner Azulay, Director, Rich Foundation, to Jack Quinn *et al.* (Jan. 10, 2001)) (Exhibit 89).

<sup>502</sup> Arnold & Porter Document Production A0865 (E-mail from Avner Azulay, Director, Rich Foundation, to Jack Quinn *et al.* (Jan. 4, 2001)) (Exhibit 100).

Jack Quinn made the same linkage between Rich and Pollard in his appeals to the White House: “Lastly, I told her [Beth Nolan] that, if they pardon JP, then pardoning MR is easy, but that, if they do not pardon JP, then they should pardon MR. In the last connection, she affirmed that they have heard from people in or connected to the GOI [Government of Israel].”<sup>503</sup>

It is difficult to gauge whether the efforts of the Marc Rich team to link their fate to that of Jonathan Pollard helped their cause. Jonathan Pollard certainly feels that the Rich pardon was granted at his expense. Pollard made the following statement after the Rich pardon:

I’ve become disillusioned. This is the hardest thing for me. . . . But what has shaken me to my very bones is to finally realize, after 16 years, that I made a mistake. For 16 years I have been desperately waving the Israeli flag, crying out for help to the Israeli political establishment. But since the Marc Rich campaign, I realize that I made a mistake. All those years I should have waved something else to get their attention. I should have waved a dollar bill in front of them and convinced them that I had a lot of money. That is the depths to which we have sunk as a nation, that an agent has to bribe his own government to rescue him. That is how low we have sunk.

Esther and I are pinching pennies in order to stay alive. Israel has never assisted us. But this Marc Rich fellow, with all of his millions, he’s the one that everyone in Israel is breaking their backs for.

\* \* \*

Barak, the politicians, and all those who were involved, were corrupted and debased by Marc Rich’s money. Every one of them was corrupted at some level or another. The corruption and the repulsiveness that characterized the Rich pardon campaign is appalling.<sup>504</sup>

While Pollard clearly did not deserve a pardon of his own, his comments about the Rich pardon may be accurate.

#### **4. Elie Wiesel**

The Rich team also attempted to recruit prominent Holocaust survivor and author Elie Wiesel to their cause. As a prominent spokesman for Jewish causes and a close friend to President Clinton, Wiesel was a logical candidate for the Rich team to turn to. It appears that Gershon Kekst initially identified Wiesel as a potential supporter of the Rich pardon. After a meeting with Kekst, Avner Azulay informed Behan, Fink, and Marc Rich that Kekst “proposed

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<sup>503</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00111 (E-mail from Jack Quinn to Avner Azulay, Director, Rich Foundation *et al.* (Jan. 3, 2001)) (Exhibit 106).

<sup>504</sup> Eran Tiffenbraun and Mody Kreitman, *Expose: Using Pollard to Get Rich*, YEDIOT ACHRONOT, Feb. 25, 2001 (Exhibit 107).



Elie Wiesel as the ‘moral authority’ to present the plea. We discussed some ideas how to reach him — and that I shall do in the next few days.’<sup>505</sup>

It appears that Azulay followed Kekst’s recommendation, and attempted to enlist Wiesel. In an e-mail of November 29, 2000, Azulay suggested that the Rich team might be obtaining a letter of support from Wiesel: “We shall have a few days to get additional letters in New York (Elie Wiesel, Abe Foxman and others). I assume by now you are getting letters from Switzerland and Spain.”<sup>506</sup> When he was interviewed over the telephone by Committee staff, Wiesel confirmed that he was asked by Avner Azulay to write a letter on behalf of Rich. At a November or December 2000 meeting at Wiesel’s home in New York City, Azulay showed Wiesel other letters written on behalf of Marc Rich.<sup>507</sup> According to Wiesel, although he told Azulay that he was impressed by the list of names, he said he could not write such a letter for someone he did not know.<sup>508</sup> Wiesel told Committee staff that he also told Azulay that he did not believe Rich could legally receive a pardon without standing trial.<sup>509</sup> According to Wiesel, even though Azulay assured him that Rich could receive a pardon, Wiesel told Azulay that he could not write the letter because he had already written a letter requesting a commutation of Jonathan Pollard’s sentence. Wiesel felt that he could not make another request.<sup>510</sup>

According to Wiesel, Avner Azulay called him several days later to see if he had changed his mind.<sup>511</sup> Wiesel told him that he had not.<sup>512</sup> While this seemingly would have been the end of Wiesel’s involvement in the Rich pardon campaign, there is evidence that it was not. Several e-mails indicate that Wiesel may have lobbied the White House. On December 21, 2000, Jack Quinn wrote to Robert Fink and Azulay, responding to Azulay’s question about “having another VIP place an additional call” to President Clinton.<sup>513</sup> As Quinn wrote, “I think another call is fine, but it needs to come from someone who can get POTUS personally on the line. Did Elie Wiesel call?”<sup>514</sup> Azulay responded to Quinn’s inquiry by e-mailing, “I don’t know positively if he talked directly to potus and if he did what was his reaction. All he told me was that ‘he was at

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<sup>505</sup> Arnold & Porter Document Production A0542 (E-mail from Avner Azulay, Director, Rich Foundation, to Kathleen Behan, Partner, Arnold & Porter *et al.* (Nov. 15, 2000)) (Exhibit 108). When asked about this document, Kekst said, “I would not have proposed Elie Wiesel as a moral authority to anyone on any subject.” Interview with Gershon Kekst, President, Kekst and Co. (Mar. 15, 2001). Kekst said that he was asked, but refused, to request Wiesel’s help. As discussed below, Kekst has repeatedly denied that he made suggestions and recommendations even when they are corroborated by contemporaneous e-mails. Kekst’s denials are not credible, and appear to be part of an effort to understate his role in the Marc Rich pardon effort.

<sup>506</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00066 (E-mail from Avner Azulay, Director, Rich Foundation, to Robert Fink and Marc Rich (Nov. 29, 2000)) (Exhibit 109).

<sup>507</sup> Telephone Interview with Elie Wiesel (Apr. 2, 2001). Yossi Ciecanover, a banker and former high official in Israel, and Danny Karavan, who lived in both Paris and Israel, arranged this meeting. Wiesel indicated that he was under the impression that Gershon Kekst asked Yossi Ciecanover to contact Wiesel on behalf of Azulay.

<sup>508</sup> *Id.*

<sup>509</sup> *Id.*

<sup>510</sup> *Id.*

<sup>511</sup> *Id.*

<sup>512</sup> *Id.*

<sup>513</sup> Arnold & Porter Document Production A0831 (E-mail from Jack Quinn to Robert Fink *et al.* (Dec. 21, 2000)) (Exhibit 110).

<sup>514</sup> *Id.*

the WH the day potus traveled but he couldn't give me any reaction.”<sup>515</sup> Azulay then spoke with Wiesel again, and on December 25, 2000, Azulay responded to Quinn in an e-mail with the subject line “elie wiesel,” stating:

I talked to him today. He says that he brought up the topic at the WH on Monday Dec 12<sup>th</sup>, he refused to disclose who he met. He was told of the difficulties lying ahead in dealing with it (he would explain it only in a face to face meeting) and hopes that they can be surmounted[.]<sup>516</sup>

On December 27, 2000, Azulay told Quinn, Kekst, Behan, Fink, and Marc Rich that he was looking for some way to have Wiesel express his opinion on the Rich pardon in a clear way to the President: “Elie Wiesel — I am still checking if there is a way to get from him a straight forward support statement — direct call to potus.”<sup>517</sup> Azulay followed up with another e-mail on December 31, 2000, stating that:

I was informed today that EW visited the WH last Dec 12<sup>th</sup>. He didn't meet or speak directly with potus. EW had a scheduled mtg [sic] with the “person responsible for the pardons.” His original goal was to discuss Pollard — and at the same time raised a question about the MRPG case. He was told that the MRPG case can't be defined as humanitarian because there was no trial, conviction or punishment to deal with[.]

I understand — although he didn't disclose it that he talked with a lawyer, the WH counsel. Perhaps BL.

This is not new to you. What the lawyers think or thought at the time. However, I think it worthwhile mentioning that EW's mtg [sic] was held in the morning [sic] hours of Monday, Dec 12<sup>th</sup> — before xx [sic] before the formal petition was delivered in the afternoon hours. I hope that the lawyers have a different view of the case by now?

It is clear that EW is reluctant to make a direct appeal to potus — with the uncertainty that he is doing something that doesn't stand a chance. Therefore, it seems plausible that if someone he respects will convince him that he is doing the right thing it might still be possible.<sup>518</sup>

Despite the assurances that Wiesel had raised the Rich pardon with White House staff, Azulay apparently continued his efforts to have Wiesel raise it directly with the President.

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<sup>515</sup> Arnold & Porter Document Production A0836 (E-mail from Avner Azulay, Director, Rich Foundation, to Jack Quinn *et al.* (Dec. 22, 2000)) (Exhibit 111).

<sup>516</sup> Arnold & Porter Document Production A0845 (E-mail from Avner Azulay, Director, Rich Foundation, to Jack Quinn *et al.* (Dec. 25, 2000)) (Exhibit 112).

<sup>517</sup> Arnold & Porter Document Production A0851 (E-mail from Avner Azulay, Director, Rich Foundation, to Jack Quinn *et al.* (Dec. 27, 2000)) (Exhibit 113).

<sup>518</sup> Arnold & Porter Document Production A0854 (E-mail from Avner Azulay, Director, Rich Foundation, to Jack Quinn *et al.* (Dec. 31, 2000)) (Exhibit 114).

On January 2, 2001, he e-mailed Fink, Quinn, and Behan to tell them that Knesset Speaker Avraham Burg was going to try to recruit Wiesel to help with the Rich case.<sup>519</sup>

Other than the information that Azulay was able to get from Wiesel, Gershon Kekst also told the rest of the Rich team that Wiesel had weighed in with the White House on the Rich pardon. In a January 9, 2001, e-mail, Kekst wrote that “[b]y the way, please tell marc [sic] that I am ‘assured’ the call has been made by elie [sic].”<sup>520</sup> Robert Fink responded that he would “tell Marc about Elie.”<sup>521</sup> When he was interviewed by Committee staff, Kekst explained that he discussed Wiesel’s involvement in the Rich pardon effort with Yossi Ciecanover, a former senior Israeli government official.<sup>522</sup> Ciecanover told Kekst that he had been asked by Azulay to ask Wiesel to express support for the Rich pardon.<sup>523</sup> Ciecanover said that Wiesel either “would call” or “did call” the President.<sup>524</sup>

Elie Wiesel has denied any involvement in the Marc Rich pardon effort, calling such allegations “pure fantasy.”<sup>525</sup> Wiesel acknowledged that he did visit the White House in December 2000 and January 2001.<sup>526</sup> However, Wiesel denied that he raised any Marc Rich pardon issues with anyone at the White House on either of those visits.<sup>527</sup> He also denied that he ever raised any pardon issues with anyone at the White House in any other form, other than writing a letter on Jonathan Pollard’s behalf to the President.<sup>528</sup> Given the lack of any first-hand evidence that Wiesel did actually lobby the President on behalf of Marc Rich, the e-mails of Kekst and Azulay most likely overstated involvement of Wiesel in the Rich pardon effort.

## **5. King Juan Carlos**

King Juan Carlos apparently made two contacts with the White House over the Rich pardon. The first contact was a direct one, when the King called President Clinton personally regarding the Rich pardon. On January 13, 2001, Avner Azulay sent an e-mail to the Rich legal team indicating that “we have a CFM [confirmation] that the king of spain [sic] talked to potus. He reports a positive conversation. No concrete sayings [sic].”<sup>529</sup> It is unclear why the King took this action on Rich’s behalf. It is possible that the King was motivated by Rich’s support of Madrid’s Jewish community, but he has not offered any explanation for his actions.

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<sup>519</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00104 (E-mail from Avner Azulay, Director, Rich Foundation, to Robert Fink *et al.* (Jan. 2, 2001)) (Exhibit 115).

<sup>520</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00159 (E-mail from Gershon Kekst, President, Kekst and Co., to Robert Fink and Jack Quinn (Jan. 9, 2001)) (Exhibit 116).

<sup>521</sup> *Id.*

<sup>522</sup> Interview with Gershon Kekst, President, Kekst and Co. (Mar. 15, 2001).

<sup>523</sup> *Id.*

<sup>524</sup> *Id.* Associate White House Counsel Eric Angel also suggested that he heard that Wiesel raised the Rich matter with President Clinton. However, after making this initial assertion, Angel backtracked, and said that he was not certain if he recalled hearing this before the pardons were granted, or from media accounts after the fact. Interview with Eric Angel, former Associate Counsel to the President, the White House (Mar. 28, 2001).

<sup>525</sup> Telephone Interview with Elie Wiesel (Apr. 2, 2001).

<sup>526</sup> *Id.*

<sup>527</sup> *Id.*

<sup>528</sup> *Id.*

<sup>529</sup> Arnold & Porter Document Production A0881 (E-mail from Avner Azulay, Director, Rich Foundation, to Jack Quinn *et al.* (Jan. 13, 2001)) (Exhibit 117).

Also in this same time frame, John Podesta heard of King Juan Carlos' interest in the Rich pardon. Podesta received a telephone call from former Congressman John Brademas, President Emeritus of New York University, who is a friend of King Juan Carlos.<sup>530</sup> The King had informed Brademas that he had recently met with the Israeli Foreign Minister, Shlomo Ben Ami, who had raised the Marc Rich pardon with the King. The King in turn called Brademas to see if Brademas could make the King's interest in the pardon known to the White House. Podesta told Brademas that "while it was the President's decision, the White House Counsel's Office and I were firmly opposed and I did not believe that the pardon would be granted."<sup>531</sup> While Podesta apparently braced the King for the worst, the King's interest in the Rich matter was made known to the President, as well as Marc Rich's supporters, who have often mentioned his support for the pardon.

## **6. Avner Azulay**

Avner Azulay is a former high-ranking Mossad agent. He founded his own security consulting company after leaving the Mossad in the early 1990s.<sup>532</sup> Marc Rich retained his services and placed him as the head of the Marc Rich Foundation and the Doron Foundation, based in Jerusalem.<sup>533</sup> These Foundations handle all of Rich's philanthropic interests (they were recently merged and are now referred to only as the Marc Rich Foundation). These foundations also paid significant amounts of money to many organizations and persons who wrote letters on behalf of Marc Rich that were included in the pardon petition.

Azulay was a central figure in the pardon effort. His name appears on a large number of the e-mails produced to the Committee that were sent among the Rich pardon team. Azulay played a key role in securing many of the letters included in the petition. He traveled throughout Israel, Europe, and the United States soliciting the letters for the pardon. Azulay also solicited many Jewish leaders for their support of Rich. In this effort, Azulay contacted Abraham Foxman, Elie Wiesel, and Rabbi Irving Greenberg, among others. As would be revealed after the pardon was granted, however, not everyone who was approached by Azulay was told that their letter would be used in the pardon effort.

The Committee first sought Avner Azulay's cooperation in its investigation in a March 8, 2001, letter asking him to participate in an interview with Committee staff.<sup>534</sup> Azulay refused to meet with staff, citing health reasons.<sup>535</sup> Committee staff followed up with a number of telephone calls to Azulay's counsel to try to secure an interview, but he made it clear that Azulay would not participate in an interview, due to health concerns and concerns regarding the ongoing

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<sup>530</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 320 (Mar. 1, 2001) (testimony of John Podesta, former Chief of Staff to the President, the White House).

<sup>531</sup> *Id.* at 317.

<sup>532</sup> Bo'az Ga'on, *Rich as Korach*, MA'ARIV WEEKEND MAGAZINE, Oct. 1, 1999 (Exhibit 6).

<sup>533</sup> *Id.*

<sup>534</sup> Letter from the Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to Avner Azulay, Director, Rich Foundation (Mar. 8, 2001) (Exhibit 118).

<sup>535</sup> Letter from Avner Azulay, Director, Rich Foundation, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Mar. 15, 2001) (Exhibit 119).

criminal investigation by the Southern District of New York. As a close advisor to Marc Rich and a key participant in the pardon effort, Azulay has a great deal of valuable information that he has decided to withhold from the Committee. His lack of cooperation appears to be part of a concerted effort by Marc Rich and his closest advisers to keep critical information about the pardon effort from the American people.

## **7. Michael Steinhardt**

Michael Steinhardt is a prominent hedge fund investor who has also been involved in Democratic politics, having served as the Chair of the Democratic Leadership Council and the Progressive Policy Institute. He first met President Clinton while serving in the former position. Steinhardt mentioned this fact in his December 7, 2000, letter to President Clinton that was included in the pardon application.<sup>536</sup> Steinhardt also wrote a follow-up letter to President Clinton on Marc Rich's behalf on January 16, 2001.<sup>537</sup>

Steinhardt has been an acquaintance of Marc Rich since the 1970s, and a close friend since 1996. Both Marc Rich and Denise Rich's father, Emil Eisenberg, had invested in Steinhardt's fund.<sup>538</sup> In 1997, Steinhardt made his first recommendation to Rich, which was to hire public relations specialist Gershon Kekst to help him with his case.<sup>539</sup> Over the course of the last few years, Steinhardt had numerous meetings and discussions with Rich, Azulay, Kekst, Jack Quinn, and Robert Fink concerning the legal negotiations and the pardon effort. Throughout that time, Steinhardt advised Rich on his efforts to settle his criminal case. In the fall of 2000, when the efforts to settle the case reached a dead-end, Steinhardt claims that he conceived of the pardon option and recommended that Rich seek a presidential pardon.<sup>540</sup>

Steinhardt was also involved in the effort to solicit Edgar Bronfman, President of the World Jewish Congress, to assist in the Rich lobbying effort. Around the same time that he faxed his follow-up letter to President Clinton, Steinhardt attempted to contact Bronfman in Washington, D.C. In a January 16, 2001, e-mail to Jack Quinn and copied to Robert Fink and Marc Rich, Avner Azulay wrote, "Michael faxed the letter to potus as requested. Edgar B. is in DC. Michael is trying to contact him to enlist his support."<sup>541</sup> When asked about this e-mail by Committee staff, Steinhardt confirmed that he had tried to contact Bronfman to enlist his support in the pardon effort.<sup>542</sup> However, Steinhardt explained that he did not contact Bronfman in time for him to help.<sup>543</sup>

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<sup>536</sup> Letter from Michael Steinhardt to President William J. Clinton (Dec. 7, 2000) (Exhibit 120). As Steinhardt mentioned in the letter to President Clinton, "I think you may remember me as one of your earliest national supporters." Steinhardt went on in the letter to explain his decision to step away from the DLC in 1995 "when ideas and human judgments seemingly led in different directions[.]"

<sup>537</sup> Letter from Michael Steinhardt to President William J. Clinton (Jan. 16, 2001) (Exhibit 121).

<sup>538</sup> Telephone Interview with Michael Steinhardt (Mar. 12, 2001).

<sup>539</sup> *Id.*

<sup>540</sup> *Id.*

<sup>541</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00171 (E-mail from Avner Azulay, Director, Rich Foundation, to Jack Quinn *et al.* (Jan. 16, 2001)) (Exhibit 122).

<sup>542</sup> Telephone Interview with Michael Steinhardt (Mar. 12, 2001).

<sup>543</sup> *Id.*

## 8. Gershon Kekst

Gershon Kekst is a prominent public relations specialist who heads his own firm, Kekst and Company, which focuses on corporate communications. Kekst was hired by Marc Rich to assist with strategy and public relations relating to his criminal case.<sup>544</sup> Michael Steinhardt told Committee staff that he first recommended Kekst to Marc Rich sometime in 1997.<sup>545</sup> Kekst recalled this meeting, explaining to Committee staff that he met Steinhardt and two of Marc Rich's lawyers, including Robert Fink, at Steinhardt's office.<sup>546</sup> According to Kekst, he told the lawyers that he would probably not get involved because he did not believe a public relations campaign would be helpful for Rich.<sup>547</sup> Rich's lawyers implored Kekst to study the Rich case and to meet personally with Rich to discuss working for him.<sup>548</sup>

A few months later, Kekst met with Marc Rich in Switzerland.<sup>549</sup> According to Kekst, Rich told him that unless Kekst could guarantee that getting publicity would help resolve Rich's problems, Rich did not want to go through with it.<sup>550</sup> Kekst said he left the meeting with the understanding that he would do no work on the Rich case.<sup>551</sup> When back in the United States, he again met with Fink and Steinhardt.<sup>552</sup> According to Kekst, he told them that they should either let Marc Rich live in peace or get a lawyer in Washington who worked with DOJ to work on the case.<sup>553</sup> As is discussed in a previous section, it was Kekst who recommended Jack Quinn to the Rich team in late 1998.<sup>554</sup> Nevertheless, Kekst claims that he never worked on the Rich case and "turned down" work on the case.<sup>555</sup> In 1997 and 1998, Rich paid Kekst \$75,000 for the time he spent reviewing the case and traveling to Switzerland. However, Kekst did not receive any payments from Rich after 1998 despite the fact that he devoted considerable time to the Rich case.

Despite his claim that he repeatedly rebuffed the Rich team's attempts to recruit him throughout the late 1990s, there is evidence that Kekst was working with the team at least as early as 1999. In responding to an October 13, 1999, e-mail from Robert Fink concerning press articles written about Rich, Kekst wrote, "I did not like it because we had agreed that no publicity [sic] best serves us for the time being. If someone wanted to change that position, I would have liked to have known so I could argue a bit."<sup>556</sup> It is telling that at this point in 1999, Kekst was referring to "us" when responding to Marc Rich's lawyer. It is also telling that in a fax sent the previous day from Azulay to Fink, Azulay suggests conferring with Kekst to get his opinion on

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<sup>544</sup> Interview with Gershon Kekst, President, Kekst and Co. (Mar. 15, 2001).

<sup>545</sup> Telephone Interview with Michael Steinhardt (Mar. 12, 2001).

<sup>546</sup> Interview with Gershon Kekst, President, Kekst and Co. (Mar. 15, 2001).

<sup>547</sup> *Id.*

<sup>548</sup> *Id.*

<sup>549</sup> *Id.*

<sup>550</sup> *Id.*

<sup>551</sup> *Id.*

<sup>552</sup> *Id.*

<sup>553</sup> *Id.*

<sup>554</sup> *Id.*

<sup>555</sup> *Id.*

<sup>556</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00642-43 (E-mail from Gershon Kekst, President, Kekst & Co., to Robert Fink (Oct. 13, 1999)) (Exhibit 123).

the articles.<sup>557</sup> This evidence strongly indicates that Kekst was already part of the Rich team in 1999.

According to several e-mails produced to the Committee, Kekst continued to be included in the strategy and planning of the Rich team in 2000. In late January of 2000, Fink e-mailed Marc Rich to inform him that Fink and Quinn would be meeting with Kekst to discuss their negotiations with the Southern District of New York.<sup>558</sup> Furthermore, in a February 10, 2000, e-mail, Avner Azulay described Kekst's active role in strategy sessions involving the Southern District. Discussing the rejection letter sent by Mary Jo White's deputy Shirah Neiman, Azulay wrote, "I note that Shirah's ltr is dated feb [sic] 2. This means that she had already issued the ltr when you JQ GK [sic] were discussing what to do and how to approach her."<sup>559</sup> After the rejection letter from the SDNY, Kekst continued to consult on the next steps the Rich team should take. As Robert Fink explained to Marc Rich on February 17, 2000, "I have only recently spoken to Jack, Gershon and Kitty on this issue and all agree that we should try to approach the DoJ tax lawyers even without the SDNY if necessary."<sup>560</sup> On February 29, 2000, Fink sent Marc Rich an e-mail noting that:

Gershon has not billed for months. He has spoken to me many time[s] and Avner at least one and meet with me and Jack at least three times (Jack speaks to him more) in the last two months and I know he speaks to Michael from time to time. He even did a draft outline of what he thought our response should be to the Southern District, which he, frankly, thought required a response. No doubt he has some billable work for which we have not been billed. He knows that you do not want him to work for free, but has not billed or has just delayed it.<sup>561</sup>

As these e-mails demonstrate, Kekst was obviously much more involved in the pre-pardon efforts than he was willing to reveal to the Committee.

Kekst's claim not to be involved in the Rich pardon campaign is also strongly contradicted by the documentary evidence received by the Committee. As early as March of 2000, Kekst was mentioned by the Rich team in their strategic planning. A March 18, 2000, e-mail from Avner Azulay to Robert Fink discussing Denise Rich's "personal mission" states, "If it works we didn't [sic] lose the present opportunity — until nov — which shall not repat [sic] itself. If it doesn't — then probably Gershon's course of acion [sic] shall be the one left option to start all over again."<sup>562</sup> When asked about this e-mail, Kekst told Committee staff that he has

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<sup>557</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00839 (Fax from Avner Azulay, Director, Rich Foundation, to Robert Fink (Oct. 12, 1999)) (Exhibit 124).

<sup>558</sup> Arnold & Porter Document Production A1011-12 (E-mail from Robert Fink to Marc Rich *et. al.* (Jan. 26, 2000)) (Exhibit 125).

<sup>559</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00698 (E-mail from Avner Azulay, Director, Rich Foundation, to Robert Fink (Feb. 10, 2000)) (Exhibit 126).

<sup>560</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00701 (E-mail from Robert Fink to Marc Rich and Avner Azulay, Director, Rich Foundation (Feb. 17, 2000)) (Exhibit 52).

<sup>561</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00722 (E-mail from Robert Fink to Marc Rich (Feb. 29, 2000)) (Exhibit 39).

<sup>562</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00729 (E-mail from Avner Azulay, Director, Rich Foundation, to Robert Fink (Mar. 18, 2000)) (Exhibit 60).

no understanding of what this e-mail means.<sup>563</sup> He said his entire awareness of Denise Rich comes from watching C-SPAN.<sup>564</sup> Kekst further stated that he did not think he knew Denise Rich was involved.<sup>565</sup> He said he has never met Denise Rich and does not recall speaking to Azulay around March 2000, the time of this e-mail.<sup>566</sup> Kekst's lack of memory on this message is brought into question by the testimony of Jack Quinn and Robert Fink. When asked about the March 18, 2000, e-mail, Quinn testified, "It's also entirely possible that Mr. Azulay, others, myself included, were involved in a conversation where someone said you know we are going to try to pardon one of these days."<sup>567</sup> Perhaps most significantly, when Fink was asked about this e-mail, he testified that he believed that "Gershon's course of action" referred to the idea of a pardon application.<sup>568</sup> This raises the distinct possibility that not only was Kekst heavily involved in the pardon effort, but more importantly that the idea to seek a pardon was his own. This may explain why Kekst was not forthcoming when he was interviewed by Committee staff.

Kekst again became heavily involved with the Rich team when the pardon effort began in earnest. In November of 2000, Robert Fink asked Kekst to meet with Avner Azulay.<sup>569</sup> This meeting took place on November 15, 2000.<sup>570</sup> According to Kekst, he told Fink that he had no interest in mounting a public relations campaign and that it would only hurt Rich.<sup>571</sup> Nevertheless, Kekst met with Azulay. Azulay told Kekst about the plans for a pardon petition and the need to get letters of support.<sup>572</sup> Azulay asked for Kekst's help but, according to Kekst, he told Azulay "no."<sup>573</sup> Kekst told Committee staff that he knew before his conversation with Azulay that Rich was seeking a pardon.<sup>574</sup> From time to time Kekst received e-mail asking if he had changed his mind. According to Kekst, he either clicked the delete button or would send a short negative answer.<sup>575</sup> Kekst asked the Rich team to let him know if Jack Quinn changed his mind about a public relations campaign.<sup>576</sup> Kekst thought that if Quinn thought a public relations campaign was warranted, then he would reconsider.<sup>577</sup>

Kekst's claim that he refused to help Azulay is undermined by a November 15, 2000, e-mail from Avner Azulay to Kathleen Behan, Robert Fink, and Marc Rich, the subject line of which reads, "meeting with gershon kekst[.]" The e-mail begins with the statement "GK supports the idea of presenting the request for a P[ardon]." The e-mail also goes on to state the following:

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<sup>563</sup> Interview with Gershon Kekst, President, Kekst and Co. (Mar. 15, 2001).

<sup>564</sup> *Id.*

<sup>565</sup> *Id.*

<sup>566</sup> *Id.*

<sup>567</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 396 (Mar. 1, 2001) (testimony of Jack Quinn).

<sup>568</sup> *Id.* at 516 (testimony of Robert Fink).

<sup>569</sup> Interview with Gershon Kekst, President, Kekst and Co. (Mar. 15, 2001).

<sup>570</sup> Arnold & Porter Document Production A0541 (E-mail from Robert Fink to Kathleen Behan, Partner, Arnold & Porter, and Avner Azulay, Director, Rich Foundation (Nov. 15, 2000)) (Exhibit 127).

<sup>571</sup> Interview with Gershon Kekst, President, Kekst and Co. (Mar. 15, 2001).

<sup>572</sup> *Id.*

<sup>573</sup> *Id.*

<sup>574</sup> *Id.*

<sup>575</sup> *Id.*

<sup>576</sup> *Id.*

<sup>577</sup> *Id.*



Although chances are not high, no damage could result thereof if plea is rejected. It could also generate a positive effect on the DOJ even if case is not resolved.

-Media & public criticism can be countered by the fact that for years DOJ and SD stonewalled and were never open to find a solution that the interested parties offered. The most recent rejection of JQ's proposal for a review can be used as an example.

-GK proposed Elie Wiesel as the "moral authority" to present the plea. We discussed some ideas how to reach him — and that I shall do in the next few days.

-I gave GK a copy of my updated long list of potential supporters (Bob — pse [sic] fax a copy to KittY [sic]), and reported on my contacts with DR's friend. I expect to receive [sic] a priority list from these to work on.

-GK pointed out that Prof. Itamar Rabinovitch [sic] is an important supporter because he is highly respected in the US and could help with additional names in the US — which are lacking in my list.

-The time-table [sic] for implementing this project with a dead line should be decided upon with JQ.

-I also raised the idea that "a task force" under his guidance and strategy should be established to make sure we make good use of the time and means available. I understood from GK that he shall undertake this project.

-GK is meeting Bob on Thursday, shall contact JQ and decide on how to proceed.<sup>578</sup>

This e-mail was followed up by Azulay in an e-mail which reads, "GK thinks it is better to present the plea in 2 consecutive steps (MR first and PG later). It might be easier to obtain positive results, if any, for one single. If it succeeds then the second shall be easier to obtain."<sup>579</sup>

These e-mails indicate that Kekst was heavily involved in the pardon process. From holding meetings with the Rich team, to going over lists of potential supporters, to recommending Elie Wiesel to lobby the President, Kekst had a hand in many aspects of the campaign. When asked about this first e-mail, however, Kekst told Committee staff that the e-mail does not accurately reflect what he said at the meeting.<sup>580</sup> Kekst stated that he does not believe he advocated seeking a pardon or taking any particular option.<sup>581</sup> He said he did not know how criticism could be countered, and that is why he did not agree to assist in the first

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<sup>578</sup> Arnold & Porter Document Production A0552-53 (E-mail from Avner Azulay, Director, Rich Foundation, to Kathleen Behan, Partner, Arnold & Porter *et al.* (Nov. 15, 2000)) (Exhibit 128).

<sup>579</sup> *Id.* at A0552.

<sup>580</sup> Interview with Gershon Kekst, President, Kekst and Co. (Mar. 15, 2001).

<sup>581</sup> *Id.*

place.<sup>582</sup> He also stated, “To think you could counter the record, which was pretty awful, is outrageous to me. I would not have proposed Elie Wiesel as a moral authority to anyone on any subject.”<sup>583</sup> However, e-mails sent by Robert Fink strongly contradict Kekst’s claim concerning Wiesel. On November 17, 2000, Fink wrote to Azulay and Behan that “Gershon made it clear that he thinks his proposed moral authority, EW, is the most important person by far.”<sup>584</sup> On January 5, 2001, Fink sent Quinn an e-mail stating that “Gershon continues to believe, indeed, he is very consistent, that Elie Wiesel [sic] is the key. I will email Avner and ask where he is on that.”<sup>585</sup> The Committee is troubled by Kekst’s apparent dishonesty regarding his suggested use of Elie Wiesel in the pardon process.

Committee staff also asked Kekst about numerous other e-mails also detailing his involvement in the Rich case. In one of the e-mails, Kekst personally responds to the Rich team about a meeting agenda from November 21, 2000, concerning the pardon petition and lobbying campaign. One of the bullets from the meeting agenda mentions “Maximizing use of Gershon.”<sup>586</sup> In response to the meeting agenda, Kekst wrote the following, in all capital letters, to Robert Fink:

ALL I CAN SAY IS THAT THE CASE MUST BE MADE (FOLLOWING THE GUIDELINES MEMO) IN THE CORE DOCUMENT. AS THERE IS NO MARGIN FOR ERROR OR OMISSION, I MUST LEAVE THE DRAFTING TO THE EXPERTS (YOU, KITTY AND JACK). I WOULD WANT A SHOT AT IT, THOUGH, BECAUSE ONCE THAT DOCUMENT HAS PASSED THAT TEST, IT SHOULD BE LOOKED AT FROM A PUBLIC AND PERSUASION TEST, AS WELL. SECOND, THE SUPPORT-SPONSORSHIP OF AN ELIE WIESEL IS CRUCIAL: AVNER SAID HE WOULD WORK ON THAT. A [sic] AND THE LIST OF SUPPORTERS MUST NOT BE ALL RECIPIENTS OF PHILANTHROPY, JEWS AND ISRAELIS: IT MUST INCLUDE POLITICAL AND BUSINESS LEADERS FROM AROUND THE WORKLD [sic], INCLUDING THE U.S.A. I BELIEVE AVNER SAID HE WOULD START ON THAT. (AS TO HOW TO USE GERSHON BEST . . . . . GEE, LET ME KNOIW [sic] WHEN YOU DECIDE !) BY THE WAY, I WILL ONLY HAVE ABOUT AN HOUR (PERHAPS A FEW MINUTES LESS) BECAUSE I AM TO CATCH A PLANE THAT AFTERNOON.<sup>587</sup>

When asked about the meeting and this e-mail, Kekst told Committee staff that he was unaware of any meeting being planned.<sup>588</sup> Committee staff then asked him about the specifics of his response. Kekst stated that he wrote this e-mail as an “angry e-mail,” suggesting that he did not

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<sup>582</sup> *Id.*

<sup>583</sup> *Id.*

<sup>584</sup> Arnold & Porter Document Production A0564 (E-mail from Robert Fink to Avner Azulay, Director, Rich Foundation, and Kathleen Behan, Partner, Arnold & Porter (Nov. 17, 2000)) (Exhibit 129).

<sup>585</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00403 (E-mail from Robert Fink to Jack Quinn (Jan. 5, 2001)) (Exhibit 130).

<sup>586</sup> Arnold & Porter Document Production A0567–0569 (Agenda of Nov. 21, 2000, Meeting) (Exhibit 76).

<sup>587</sup> Arnold & Porter Document Production A0570 (E-mail from Gershon Kekst, President, Kekst and Co., to Robert Fink and Jack Quinn (Nov. 19, 2000)) (Exhibit 131).

<sup>588</sup> Interview with Gershon Kekst, President, Kekst and Co. (Mar. 15, 2001).

want to be involved.<sup>589</sup> Asked why he said he wanted “a shot at [the pardon petition] though because once the document has passed that test, it should be looked at from a public and persuasion test as well,” Kekst said “I don’t know.”<sup>590</sup> Later, Kekst claimed that he was concerned because Azulay went so far in enlisting Jewish organizations that it would have a negative “boomerang” effect on the Jewish people.<sup>591</sup> So, Kekst said he may have offered to review the petition as “one last shot to keep them from doing that.”<sup>592</sup> Kekst stated that his offer to review the pardon petition was limited solely to this aspect.<sup>593</sup> Kekst claimed that when he stated, “it should be looked at from a public and persuasion test as well,” he was referring to trying to limit any anti-Semitic backlash.<sup>594</sup>

The explanation by Kekst that he was only reluctantly involved, and only offered advice because of fear of an anti-Semitic backlash is belied by the fact that the Rich team included him in numerous conference calls, and continued to include him in their e-mail loop. Moreover, Kekst continued to respond to some of the messages. For example, before the pardon application was submitted, Robert Fink forwarded Kekst a copy of Avner Azulay’s work on the letters concerning Rich’s philanthropic activity that would be included in the application.<sup>595</sup>

On December 26, 2000, Kekst responded to a Robert Fink e-mail, which discussed contacting Hillary Rodham Clinton for her support and having Denise Rich call the White House, by registering his agreement with Fink’s recommendation.<sup>596</sup> The following day, Kekst responded to an e-mail from Robert Fink, reminding him of his position on submitting two separate pardon applications for Marc Rich and Pincus Green. Kekst responded, “As you will recall, I always thought it best to de-link the two. But . . . .”<sup>597</sup> Finally, on December 27, 2000, Kekst responded to an e-mail from Fink concerning Senator Charles Schumer, stating, “Can quinn [sic] tell us who is close enough to lean on schumer [sic]?? I am certainly willing to call him, but have no real clout. Jack might be able to tell us quickly who the top contributors are . . . . maybe Bernard Schwartz??”<sup>598</sup> As this series of e-mails makes clear, Kekst was far from a passive bystander who was simply worried about anti-Semitism. He was actively making suggestions about tactics — including the use of prominent political contributors to enlist the help of elected officials in the pardon effort.

During the last few weeks of the Clinton Presidency, Kekst continued to advise the Rich team. When asked on January 9, 2001, by Robert Fink about a potential press story on Rudy Giuliani’s treatment of Marc Rich, Kekst responded:

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<sup>589</sup> *Id.*

<sup>590</sup> *Id.*

<sup>591</sup> *Id.*

<sup>592</sup> *Id.*

<sup>593</sup> *Id.*

<sup>594</sup> *Id.*

<sup>595</sup> Dickstein Shapiro Morin & Oshinsky Document Production DSM0001 (E-mail from Robert Fink to Gershon Kekst, President, Kekst and Co. (Nov. 30, 2000)) (Exhibit 132).

<sup>596</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00076 (E-mail from Gershon Kekst, President, Kekst and Co., to Robert Fink (Dec. 26, 2000)) (Exhibit 133).

<sup>597</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00081 (E-mail from Gershon Kekst, President, Kekst and Co., to Robert Fink (Dec. 27, 2000)) (Exhibit 134).

<sup>598</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00083 (E-mail from Gershon Kekst, President, Kekst and Co., to Robert Fink (Dec. 27, 2000)) (Exhibit 135).

Unless jack quinn changes his views about the risk-reward ratio for publicity, I vote against it. The herald tribune, in any event, is not the place for us to be. The publicity I was referring to relates to the repair of marc's name assuming we fail, not to help make it happen (unless jack says it would). By the way, please tell marc that I am "assured" the call has been made by elie.<sup>599</sup>

Two days later, Fink wrote to Marc Rich, stating, "Meanwhile I spoke to Gershon yesterday, and he said he would call first thing this morning to specifically ask that EW call Potus and no one else."<sup>600</sup> That same day, January 11, 2001, Kekst received a copy of a letter from the Speaker of the Israeli Knesset concerning Marc Rich. Kekst questioned its effectiveness in asking Quinn and Fink, "[I]s this a helpful letter?"<sup>601</sup> On January 16, 2001, Robert Fink e-mailed Marc Rich about Kekst's views on the pardon effort:

Gershon just called and said he is convinced this is still possible and that this is a critical week, and suggests you call Jack directly and encourage him to keep plugging away, and thanking him for what he has done. Gershon is also convinced that the no publicity route was correct.<sup>602</sup>

Even after the pardon was granted, Kekst continued to receive and respond to e-mails from the Rich team. In a January 23, 2001, e-mail that Kekst sent to Quinn and Fink, he stated "I spoke with marc. He asked the question and I told him that he should not speak with any reporters anywhere, . . . , [sic] if after his first trip to America and that 'trauma' passes, he may be able to make 'courtesy calls' in Europe."<sup>603</sup> By dealing directly with Marc Rich concerning press inquiries, Kekst was clearly actively involved in the pardon process until the end. When asked about this e-mail, Kekst said that he spoke with Marc Rich twice after the pardon.<sup>604</sup> The first, he claimed, was to say congratulations.<sup>605</sup> The second was to say that he should do nothing at all about the public relations strategy.<sup>606</sup>

A series of e-mails from January 22 and January 24, 2001, suggest, however, that Kekst was actively consulting with the Rich team on post-pardon public relations strategy. On January 22, Kekst made suggestions for a post-pardon letter from Marc Rich to President Clinton. He wrote, "I think he needs to make reference to the fact that the president's opinion and action were based on his having been willing to take the time and give consideration to the best professional

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<sup>599</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00159 (E-mail from Gershon Kekst, President, Kekst and Co., to Robert Fink and Jack Quinn (Jan. 9, 2001)) (Exhibit 116).

<sup>600</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00165 (E-mail from Robert Fink to Marc Rich and Avner Azulay, Director, Rich Foundation (Jan. 11, 2001)) (Exhibit 136).

<sup>601</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00163-64 (E-mail from Gershon Kekst, President, Kekst and Co., to Robert Fink and Jack Quinn (Jan. 11, 2001)) (Exhibit 103).

<sup>602</sup> Piper Marbury Rudnick & Wolfe Document Production PMRW 00168 (E-mail from Robert Fink to Marc Rich (Jan. 16, 2001)) (Exhibit 137).

<sup>603</sup> Jack Quinn Document Production (E-mail from Gershon Kekst, President, Kekst and Co., to Jack Quinn and Robert Fink (Jan. 23, 2001)) (Exhibit 138).

<sup>604</sup> Interview with Gershon Kekst, President, Kekst and Co. (Mar. 15, 2001).

<sup>605</sup> *Id.*

<sup>606</sup> *Id.*

analysius [sic] of the matter which made clear the need to ‘do justice’ at this point.”<sup>607</sup> That same day, Avner Azulay wrote to Quinn, Fink, Behan, Green, Kekst, and Rich, stating, “I thought we agreed that all inquiries, interviews should be channeled to gershon. Why is BF giving interviews? He shouldn’t be dealing with this aspect.”<sup>608</sup> Furthermore, in a discussion about an op-ed piece being solicited by the Rich team, a statement to Robert Fink reads, “It is Gershon’s view that the New York Times is the first choice for placement. He suggests that Jack resubmit this version for the Time’s consideration.”<sup>609</sup> In another e-mail of January 24, 2001, Fink asked a question about a New York Times reporter. In response, Kekst wrote, “I believe the paper is being dealt with . . . and has been[.]”<sup>610</sup> Asked about this e-mail by Committee staff, Kekst said he was ignoring Azulay and did not want to talk to him.<sup>611</sup> Kekst said he believed Azulay had the “insane idea” that the Times reporter could help turn the public relations campaign around.<sup>612</sup> Nevertheless, Kekst continued to advise the Rich team and deal with members of the press. On January 25, 2001, when it was clear that the press was turning negative on the Rich pardon, Kekst issued a warning to Azulay, Fink and Quinn. He stated:

The reporter at the ny times is Allison cowan working with Johnny apple. A senior, well-experienced team. They have met with jack and I believe you should run this past him. Unless there is strong evidence, they are not likely to fabricate a story. Is there any trace of evidence?? lenzner told me that forbes believes milkin [sic] should have been pardoned and he wanted to do a piece contrasting the two and showing that if mike didn’t [sic] deserve one certainly m.r. [sic] didn’t either. Talk with fink about him. PLEASE be careful about letting so many people talk with reporters.....all that is being accomplished is that, however ‘well-intentioned’ they stir the story and keep it cooking!! We are a stage [sic] now at which the story is being kept alive be [sic] wannabe heroes.<sup>613</sup>

Kekst’s claim not to be actively involved in the pardon effort is simply not believable. It is troubling that, despite all of the evidence to the contrary, Kekst told the Committee that he “did not work on the Marc Rich case.”<sup>614</sup> It would make no sense for Azulay or others on the Rich team to waste time e-mailing each other about suggestions that were not made or offers to help that were fabricated. If Kekst were not involved, the Rich team would have been engaged in a fruitless effort to include him in their deliberations. Kekst made far too many suggestions to the Rich team throughout the pardon campaign for him to credibly assert that he was not involved. Kekst even admitted to Committee staff that he billed Marc Rich between \$80,000 and \$90,000 — a large fee for someone who was not involved in the process.<sup>615</sup> It stands to reason

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<sup>607</sup> Jack Quinn Document Production (E-mail from Gershon Kekst, President, Kekst and Co., to Robert Fink and Jack Quinn (Jan. 22, 2001)) (Exhibit 139).

<sup>608</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00191 (E-mail from Avner Azulay, Director, Rich Foundation, to Jack Quinn *et al.* (Jan. 22, 2001)) (Exhibit 69).

<sup>609</sup> Jack Quinn Document Production (E-mail from Roanne Kulakoff to Robert Fink (Jan. 24, 2001)) (Exhibit 140).

<sup>610</sup> Jack Quinn Document Production (E-mail from Gershon Kekst, President, Kekst and Co., to Avner Azulay, Director, Rich Foundation *et al.* (Jan. 24, 2001)) (Exhibit 141).

<sup>611</sup> Interview with Gershon Kekst, President, Kekst and Co. (Mar. 15, 2001).

<sup>612</sup> *Id.*

<sup>613</sup> Jack Quinn Document Production (E-mail from Gershon Kekst, President, Kekst and Co., to Avner Azulay, Director, Rich Foundation *et al.* (Jan. 25, 2001)) (Exhibit 142).

<sup>614</sup> Interview with Gershon Kekst, President, Kekst and Co. (Mar. 15, 2001).

<sup>615</sup> *Id.*

that a person such as Kekst who needs to preserve his public image for his own livelihood as a public relations consultant would try to distance himself from the Marc Rich affair. Unfortunately, Kekst did so at the expense of providing the Committee with candid information.

## **9. Robert Fink**

Robert Fink has worked as an attorney for Marc Rich for two decades, beginning in 1980.<sup>616</sup> At that time, Fink was with the law firm of Milgrim Thomajan, and Lee. Fink's former law firm was responsible for what the Southern District of New York referred to as the "steamer trunk affair," in which subpoenaed documents from Marc Rich's company were taken out of the country on a plane to Switzerland.<sup>617</sup> Fink continued to represent Rich when he moved to his new law firm, Piper Marbury Rudnick & Wolfe. Fink was involved throughout the 1980s and 1990s with the failed efforts to reach an acceptable arrangement with the SDNY. It was Fink to whom the SDNY communicated the offer to drop the RICO charge in the indictment if Rich and Green would return to the United States to face trial.<sup>618</sup> Fink continued to work on the matter when Jack Quinn and Kitty Behan were retained by Rich. He was one of the most active and important members of the Rich pardon effort.

## **10. Kathleen Behan**

Kathleen Behan is a partner at the law firm Arnold & Porter. Jack Quinn recruited her to the Marc Rich case when he was also at the firm. Behan was one of the three most active lawyers in the pardon process, along with Quinn and Fink. Behan met Marc Rich in 1999 when she and Quinn flew to Switzerland to discuss their representation of Rich. Like Quinn, Behan was retained in July of 1999 to work for Marc Rich for a fee of at least \$330,000 that included \$55,000 per month for the first six months.<sup>619</sup> Behan was interviewed by Committee staff on February 27, 2001. Behan asserted attorney-client privilege or work product privilege in response to the majority of questions relating to her work on the pardon.<sup>620</sup>

## **11. Peter Kadzik**

Peter Kadzik is a partner at Dickstein Shapiro Morin & Oshinsky LLP. According to Jack Quinn, Kadzik was hired at the suggestion of Michael Green, a fellow partner of Kadzik's, because he was "trusted by [White House Chief of Staff John] Podesta," and was considered to be a "useful person to convey [Marc Rich's] arguments to Mr. Podesta."<sup>621</sup> Kadzik's effort on behalf of the Rich team included seven contacts with the White House Chief of Staff or his

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<sup>616</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 467 (Mar. 1, 2001) (testimony of Robert Fink).

<sup>617</sup> See Section I(B)(1) above.

<sup>618</sup> Piper Marbury Rudnick & Wolfe Document Production 00697 (E-mail from Robert Fink to Avner Azulay, Director, Rich Foundation (Feb. 10, 2000)) (Exhibit 32).

<sup>619</sup> Arnold & Porter Document Production A0507-10 (Letter from Kathleen Behan, Partner, Arnold & Porter, to Marc Rich (July 21, 1999)) (Exhibit 34).

<sup>620</sup> *Id.*

<sup>621</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 432 (Mar. 1, 2001) (testimony of Jack Quinn).

assistants between December 12, 2000, and the end of the Clinton Administration.<sup>622</sup> He also called the White House four out of the final five days of the Administration to see what progress had been made on the Rich pardon.<sup>623</sup> Based on the testimony of Podesta before the Committee, it does not appear the Kadzik's efforts were successful, as Podesta remained opposed to the Marc Rich pardon until the end.

## **B. Importance of Secrecy to the Marc Rich Team**

During the lobbying campaign for the pardon, the Rich team was keenly aware that public knowledge of their efforts would hamper their ability to secure a pardon. The most logical reason for their concern was knowledge that sunshine regarding the Rich pardon application would severely curtail their ability to misrepresent facts about the history of Rich's legal troubles. Perhaps more importantly, public attention probably would have resulted in the Administration consulting with the Central Intelligence Agency or the National Security Agency. Such consultation would certainly have had a negative impact on the Rich pardon petition.

Rich's legal team was determined to keep their efforts secret from the outset. An agenda for one of the first meeting regarding the Rich pardon effort lists as a discussion item "A need for secrecy and possibility/likelihood of potential leaks. (Kitty says people are watching this closely.)"<sup>624</sup> Robert Fink defended this approach, testifying that "Marc Rich has been victimized by the press and publicity and that if the press learned about this that victimization would continue."<sup>625</sup>

On January 9, 2001, Robert Fink sent an e-mail to Gershon Kekst and Jack Quinn in which he discussed a negative story that was being written about New York Mayor Rudolph Giuliani.<sup>626</sup> Fink mentioned that the story "led to a discussion [with Marc Rich] on whether we seek any publicity about the pardon application[.]"<sup>627</sup> As Fink continued, "I explained that we did not want publicity now. He [Marc Rich] understands that is our view. I look forward to hearing from you."<sup>628</sup> Jack Quinn responded to Fink's e-mail the same day stating, "[I] think we've benefitted from being under the press radar. [P]odesta said as much."<sup>629</sup> Gershon Kekst also responded to Fink's message, stating, "Unless jack quinn [sic] changes his views about the risk-reward ratio for publicity, I vote against it."<sup>630</sup> To this, Fink responded, "I agree with your views on publicity[.]"<sup>631</sup>

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<sup>622</sup> Dickstein Shapiro Morin & Oshinsky Document Production DSM0064-65 (Billing records from Dickstein Shapiro Morin & Oshinsky to Robert Fink (Dec. 12, 2000, and Feb. 13, 2001) (Exhibit 143).

<sup>623</sup> *Id.*

<sup>624</sup> Arnold & Porter Document Production A0569 (E-mail from Robert Fink to Jack Quinn *et al.* (Nov. 19, 2000)) (Exhibit 76). Fink sent the agenda for the November 21, 2000, meeting as an e-mail attachment.

<sup>625</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 476 (Mar. 1, 2001) (testimony of Robert Fink).

<sup>626</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00158 (E-mail from Robert Fink to Gershon Kekst, President, Kekst and Co., and Jack Quinn (Jan. 9, 2001)) (Exhibit 144).

<sup>627</sup> *Id.*

<sup>628</sup> *Id.*

<sup>629</sup> *Id.*

<sup>630</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00159 (E-mail from Gershon Kekst, President, Kekst and Co., to Robert Fink and Jack Quinn (Jan. 9, 2001)) (Exhibit 116).

<sup>631</sup> *Id.*

The fears over the disclosure of the pardon effort concerned the Rich team up until the very end of the Clinton Administration. On January 19, 2001, Robert Fink e-mailed Avner Azulay, Mike Green, and Kitty Behan, and informed them that the head of the SEC knew about the pardon efforts.<sup>632</sup> As Fink stated in the message, “[w]e agree that is not good and that maybe the SDNY knows too, but we have no information on it.”<sup>633</sup> In other words, the Rich team recognized that knowledge of their efforts could produce an outcry, especially if government officials who knew the details of the criminal case became aware of the possibility of a pardon for Rich and Green. Jack Quinn acknowledged as much at the Committee’s February 8, 2001, hearing:

Rep. LaTourette: [I]s there any plain reading of that e-mail on January 19, 2001, other than you all were afraid if the Southern District of New York caught wind of what you were up to, the egg was going to hit the fan?

Mr. Quinn: My preference was that the White House counsel contact Main Justice and that, based on the course of dealings we had earlier, that they would make a recommendation that would be helpful to us. I certainly knew that if Main Justice deferred to the prosecutors in New York, they were likely to have a negative recommendation. But I thought that, based on our earlier dealings, they had enough information.<sup>634</sup>

Not only did Quinn and the Rich team recognize the public relations problem posed by the Rich pardon campaign, but, according to one e-mail, the White House Chief of Staff recognized this potential problem as well.<sup>635</sup> As it turned out, the eventual pardon of Marc Rich by President Clinton produced exactly the public outrage that the Rich team sought to avoid by keeping their lobbying campaign secret. However, by the time this wide-ranging public outrage was realized, Marc Rich already had his presidential pardon secured.

### **C. Jack Quinn and Eric Holder Cut the Justice Department Out of the Process**

By late November 2000, the Marc Rich pardon petition had been prepared and was ready to be filed with the White House. Rather than go immediately to the White House, Jack Quinn first turned to Deputy Attorney General Eric Holder. Holder had worked with Quinn during the previous year to try to force the Southern District of New York to sit down and meet with Quinn about settling the charges against Rich. During that process, Holder became more familiar with the Marc Rich case, to the extent he was aware of the charges against Rich, and the fact that Rich

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<sup>632</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00180 (E-mail from Robert Fink to Avner Azulay, Director, Rich Foundation *et al.* (Jan. 19, 2001)) (Exhibit 145).

<sup>633</sup> *Id.*

<sup>634</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 230–31 (Feb. 8, 2001) (statement of the Honorable Steven LaTourette and testimony of Jack Quinn).

<sup>635</sup> For his part, Podesta stated that he did not recall telling Kadzik that Rich had benefited from being “under the press radar.” See “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 432 (Mar. 1, 2001) (testimony of John Podesta, former Chief of Staff to the President, the White House).



was a fugitive from justice. Despite these facts, Holder had a basically sympathetic view of the Rich case. Holder believed that the prosecutors in New York should meet with Quinn, despite the fact that Rich was a fugitive and that prosecutors from the SDNY had already had a number of unproductive negotiations with Rich's lawyers. In fact, Holder told Quinn the refusal of the prosecutors to meet was "ridiculous,"<sup>636</sup> that "we're all sympathetic," and the "equities [are] on your side."<sup>637</sup> By taking this position with Quinn, Holder had already sent the message to Quinn that he had a favorable view of the Marc Rich case, despite the firmly entrenched position that his own agency had taken for the preceding seventeen years.

As Marc Rich's lawyers prepared to file the pardon petition, Eric Holder provided pivotal assistance to their effort. Holder encouraged Jack Quinn to seek the pardon and helped Quinn cut the Justice Department out of the process of reviewing Rich's pardon petition. Ordinarily, the Justice Department has a key role in reviewing pardon petitions and providing a recommendation to the President as to whether each petition should be granted. However, Eric Holder abdicated his responsibilities as the Deputy Attorney General and took actions that ensured the Justice Department would have no meaningful input on the Rich and Green pardons. This was the first of two actions taken by Holder at the Justice Department's expense. After first succeeding in keeping the career prosecutors at the Justice Department from having any input in the Rich pardon, Holder informed the White House on the last day of the Clinton Administration that he was "neutral, leaning towards favorable" on the Rich and Green pardons.<sup>638</sup> Together, these actions had a dramatic impact on ensuring that the pardons were ultimately granted.

Knowing that Holder was favorably disposed to the Marc Rich case, Quinn approached Holder and confided in him that he was going to file the pardon petition with the White House. On November 21, 2000, Holder, Quinn, and representatives from the U.S. Marshals Service met regarding a matter for another client of Quinn's. After this meeting was over, Quinn took Holder aside and informed him that he would be filing a pardon petition on behalf of Marc Rich directly with the White House. Quinn then stated that "I hoped I could encourage the White House to seek his views and he said I should do so."<sup>639</sup> Quinn then asked Holder if Quinn should send a letter to the White House encouraging the White House Counsel to seek Holder's views. Holder told Quinn "no, just have him [sic] call me."<sup>640</sup> It is also likely that at the November 21, 2000, meeting, Quinn and Holder discussed whether Holder wanted to receive a copy of the pardon petition. When a senior Justice Department official informed *The Washington Post* that Holder left the November 21 meeting expecting to receive a copy of the pardon petition from Quinn, Quinn told the newspaper that:

I am astounded that he now takes that position. . . . I am astounded because I specifically had a conversation [in November] with him [Holder] about the fact

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<sup>636</sup> See Jack Quinn Document Production (Note of Jack Quinn, Nov. 8, 1999) (Exhibit 48). See also "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 45 (Feb. 8, 2001) (testimony of Jack Quinn).

<sup>637</sup> See Jack Quinn Document Production (Note of Jack Quinn) (Exhibit 56).

<sup>638</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 198 (Mar. 1, 2001) (testimony of Eric Holder, former Deputy Attorney General, Department of Justice).

<sup>639</sup> *Id.* at 44 (Feb. 8, 2001) (testimony of Jack Quinn).

<sup>640</sup> *Id.* at 158.

that I was going to submit it to the White House and I asked him if he needed it in writing and he said he did not.<sup>641</sup>

While Quinn did not repeat this charge at the Committee's hearings, his statement to the newspaper makes it fairly clear that he offered to provide Holder with a copy of the pardon petition, and that Holder decided he did not want one. This appears to be in keeping with Holder's apparent disinterest in learning about the details of Marc Rich's legal troubles. In the normal course of events, one would expect Holder to have welcomed input from professional staff with experience in the pardon process. For some unknown reason, however, he eschewed such expertise.

For his part, Holder has testified that he does not recall any discussion of Marc Rich with Jack Quinn on November 21, 2000:

Mr. Quinn has recently stated after the meeting he told me he was going to file a pardon request on behalf of Mr. Rich at the White House. I have no memory of that conversation but do not question Mr. Quinn's assertion. His comment would have been a fairly unremarkable one, given my belief that any pardon petition filed with the White House ultimately would be sent to the Justice Department for review and consideration.<sup>642</sup>

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What I assumed was going to happen in late November of 2000 was that after the petition had been filed, that the White House would be reaching out to the Justice Department, and that we would have an opportunity at that point to share with them as we do in pardon—that we generally do in pardon requests, after all of the vetting had been done, the opinion of the Justice Department.<sup>643</sup>

Holder's defense is difficult to believe. First, his characterization of Quinn's comments as "unremarkable" is inconsistent with everything about the Rich case. Marc Rich was one of the most wanted fugitives in the United States, and the largest tax cheat in the country's history at the time of his indictment. Holder knew that his fugitive status meant that federal prosecutors wouldn't even meet with Rich's lawyers. Yet, when Jack Quinn informed him that he was seeking a presidential pardon, outside of the normal pardon process, Holder claims that he did not take note of it and could not even remember it two months later. Equally as unbelievable is Holder's claim that he did not want a copy of the pardon petition because he was confident that the White House would send the Justice Department a copy of the petition and seek out the Department's opinion. The fact that Quinn was going directly to the White House indicated that Quinn was trying to avoid the normal Justice Department procedure by which pardon petitions were reviewed. It also indicated that no serious vetting would be done on the Rich petition.

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<sup>641</sup> James V. Grimaldi & Robert O'Harrow Jr., *Recollections At Odds On Pardon*, WASH. POST, Jan. 26, 2001, at E1.

<sup>642</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 193 (Feb. 8, 2001) (testimony of Eric Holder, former Deputy Attorney General, Department of Justice).

<sup>643</sup> *Id.* at 212.

For his part, Jack Quinn claimed that he was not trying to keep any information from the Justice Department, but rather was filing his petition with the White House merely to expedite consideration of the pardon. Quinn claimed that he believed that the White House would provide the Justice Department with a copy of the pardon petition, and therefore, that he had no malign intent in failing to provide Holder with a copy of the petition in November, or at any point during the application process:

Counsel: Why did you not send Mr. Holder the pardon application?

Quinn: I believed that a good deal of the material included in the pardon application consisted, at least in their central parts, of the materials that I had provided to him in October 1999 when he asked Mr. Margolis to take a look at this matter. But you're correct. I did not at that time send him a copy of the full pardon petition.

Counsel: The question was, why did you not do that? Is it because you thought he had all of the material from over a year previous?

Quinn: Well, I thought he was sufficiently familiar with the underlying case that, when he was asked, he would be in a position to advise the White House.

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Counsel: But you had not provided the extent of your ultimate argument to the President, so you didn't feel that he needed to see that?

Quinn: Well, again, I think, in fairness, you have to say, if you look at the material I provided to him earlier about the flaws in the indictment, you will see that it was the same argument made in the pardon petition.

Counsel: Because you're proud of your work, and you believe in your work, you want to provide it to people. It's not a matter of how much it costs, because that's not the issue. You would like to provide it to people so they can see the extent of what you are representing in whatever material you're pursuing. And, generally, it seems when you don't provide material to people it's because you don't want them to review it or you don't want them to poke holes in it or perhaps find a flaw. I mean, the courts require briefs. You have to provide them so they can see your legal reasoning. In this case, were you concerned that if you provided Mr. Holder your application that Mr. Holder might send it on to somebody who might actually read it and look at it?

- Quinn: Absolutely not. Again, I had provided these arguments to him at an earlier point.
- Counsel: You haven't provided all of the arguments, all the letters and all the other things in the tabs. You couldn't have provided them previously.
- Quinn: Fair enough. The other point I was going to make is, as I said earlier, I encouraged the White House Counsel's Office to reach out to him, and there's no reason in the world why they couldn't have shared a copy of the pardon petition when they did so.
- Counsel: I understand, but I've not yet heard of a lawyer who has decided to take a weak argument and leave it on the table when he's strengthened his argument. . . . [I]t's hard for us to understand, even if it was the 11th hour, why you simply wouldn't put it in an envelope, messenger it over, let Mr. Holder take a look at it, take it home, spend a couple of hours. He could think to himself, maybe we want to talk to security people; maybe we want to send it over to the FBI. It's just — we still don't understand. I guess what you said is you provided material the previous year, and that was enough for Mr. Holder.
- Quinn: Well, look, you can disagree with me on this. I was not — I didn't make that decision in an effort to hide the pardon petition from anybody. I encouraged the White House to reach out to the Justice Department and seek their views. That's my testimony.<sup>644</sup>

Quinn's testimony is not convincing. As the questioning at the hearing demonstrated, Quinn simply did not have any reasonable justification for failing to send Holder a copy of the pardon petition. Perhaps most important, Quinn knew that if the petition were provided to Holder, Holder would likely forward it to the staff of the Pardon Attorney. Even more likely, the correspondence would be copied to the Pardon Attorney as a matter of routine. These lawyers would review the case, which would have likely involved contacts with the attorneys at the Southern District of New York, FBI, CIA, and NSA. If that had happened, Quinn's arguments would have been revealed as fraudulent, and this might have proven fatal to the pardon effort.

Quinn's claim that he had provided Holder with everything he needed to know in 1999 simply is not true. In early 2000, Quinn provided Holder with a two-page set of talking points that addressed solely why the Justice Department should review the Rich indictment.<sup>645</sup> It did not even begin to address the issues raised in the 31-page pardon petition. Quinn could have no reason for wanting to keep the pardon petition from Holder other than his desire to keep Rich's quest for a pardon as confidential as possible.

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<sup>644</sup> *Id.* at 267–68 (testimony of Jack Quinn).

<sup>645</sup> Jack Quinn Document Production (Memorandum entitled "Why DOJ Should Review the Marc Rich Indictment," Feb. 28, 2000) (Exhibit 53).

The key point that must be taken away from November 21, 2000, discussion between Holder and Quinn is that it took both of them to keep the Rich pardon petition from the Justice Department. It cannot be disputed that Holder should have recognized the significance of the fact that Quinn was applying for a pardon for Rich, and should have asked for a copy of the pardon petition to be forwarded to the Justice Department. Holder has not provided any coherent explanation of why he failed to do so. Similarly, Quinn should have provided a copy of the pardon petition to Holder. Quinn has claimed that he had nothing to hide, and frequently asked the White House to include the Justice Department in the pardon process. Quinn's claims are misleading. Quinn clearly tried to keep his pardon petition from the Justice Department, apparently out of the fear that it could fall into the wrong hands, namely the prosecutors in New York, or anyone else who had knowledge of Rich's illegal activities or his subsequent actions in support of countries like Iraq, Iran, and Libya.

The final question then is whether Holder's failure to obtain the Rich petition and involve the Justice Department in the pardon process was the result of incompetence or a deliberate decision to assist Jack Quinn. At the Committee's hearing, Holder suggested that it was the result of poor judgment, initially not recognizing the seriousness of the Rich case, and then, by the time that he recognized that the pardon was being considered, being distracted by other matters.<sup>646</sup> However, it is difficult to believe that Holder's judgment would be so monumentally poor that he could not understand how he was being manipulated by Jack Quinn. Rather, the preponderance of the evidence indicates that Eric Holder was deliberately assisting Quinn with the Rich petition, and deliberately cut the rest of the Justice Department out of the process to help Quinn obtain the pardon for Marc Rich. This conclusion is supported by the following e-mail, which was sent by Quinn to Kitty Behan, Gershon Kekst, and Robert Fink on November 18, 2000, *three days before* Quinn's meeting with Holder on November 21:

Subject: eric

spoke to him last evening. he says go straight to wh. also says timing is good.  
we shd get in soon. will elab when we speak.<sup>647</sup>

Assuming the "eric" referenced is Eric Holder, this e-mail contradicts the heart of Holder's defense. Holder claims that he was not focused on the Rich pardon until late in the process, at first on January 6, when he spoke to Beth Nolan, and then, not really until January 19, when he announced his position of "neutral, leaning towards favorable." He claims that he does not even recall the November 21, 2000, meeting, because it was an unremarkable request. And he claims that he did not ask for a copy of the petition because he thought he would get everything in due course from the White House. However, this e-mail indicates that Holder suggested that Quinn file the petition directly with the White House and circumvent the Justice Department. It also suggests that Holder had reason to know that the request was remarkable, as he suggested to

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<sup>646</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 193-95 (Feb. 8, 2001) (testimony of Eric Holder, former Deputy Attorney General, Department of Justice).

<sup>647</sup> Arnold & Porter Document Production A0565 (E-mail from Jack Quinn to Kathleen Behan, Partner, Arnold & Porter *et al.* (Nov. 18, 2000)) (Exhibit 146).

Quinn that he circumvent the Justice Department. Finally, it indicates that Holder was a willing participant in the plan to keep the Justice Department from knowing about and opposing the Marc Rich pardon.

The final question is why Eric Holder would do such a thing. As discussed below, Holder had been asking Quinn for his help in being appointed Attorney General in a Gore Administration. At the time when Holder made the decision to assist Quinn, there was still a realistic possibility of Vice President Gore winning the election. As an influential friend of Vice President Gore, Jack Quinn would be in a key position to assist Holder's chances of becoming Attorney General. While this may not have been Holder's sole motivation in aiding Quinn, it was likely a powerful motivation for Holder.<sup>648</sup> Regardless of Holder's motivations, his actions were unconscionable. One of Holder's primary duties in the pardon process was to make sure that the views of the Justice Department were adequately represented in the pardon process. In addition, as a Justice Department employee, he was bound by federal regulations that required the Justice Department to review pardon petitions before they were presented to the White House. Finally, as a simple matter of prudence, Holder should have ensured that he knew something about the pardon before he took action that substantially assisted the chances that the pardon would be issued. By helping Quinn circumvent the Justice Department, Holder ensured that his own prosecutors would not be able to express their opinion about the Rich case. In so doing, Holder disserved his own Department, as well as the statutes he was sworn to uphold.

#### **D. The Filing of the Pardon Petition**

On December 11, 2001, Jack Quinn called White House Counsel Beth Nolan to inform her that he would be submitting a pardon application to the White House that day.<sup>649</sup> Quinn personally delivered the application to the White House later that day.<sup>650</sup> Accompanying the application was a letter from Quinn to President Clinton, briefly explaining Rich's arguments.<sup>651</sup> In that letter, Quinn provided a brief summary of his arguments, claiming that a "grave injustice" had been done, that Rich and Green's attempts at settlement had been rebuffed, and that the charges against Rich and Green were unjustified.

The filing of the pardon petition triggered a small wave of phone calls and other attempts to lobby the President and top White House officials on the Rich pardon. These contacts ranged from calls from Prime Minister Ehud Barak to personal communications between Jack Quinn and his former White House colleagues.

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<sup>648</sup> In evaluating Holder's motivations, one should keep in mind that the only reason Jack Quinn was hired by Marc Rich was because of Eric Holder's initial recommendation to Gershon Kekst. Holder's suggestion to Kekst that he hire a lawyer like Quinn, who could come to him and solve the problem, was a self-fulfilling prophecy.

<sup>649</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 431 (Mar. 1, 2001) (testimony of Beth Nolan, former Counsel to the President, the White House). By contrast, Kathleen Behan, who was present when Quinn called Nolan, told Committee Staff that she did not recall Quinn saying he was sending over a pardon application. Behan stated, "It sounded like he didn't need to explain to her what it was. It was very cordial conversation." Interview with Kathleen Behan, Partner, Arnold & Porter (Feb. 27, 2001).

<sup>650</sup> Jack Quinn Document Production (Letter from Jack Quinn to President William J. Clinton (Dec. 11, 2000)) (Exhibit 147).

<sup>651</sup> *Id.*

## **1. December 11, 2000, Call from Ehud Barak**

On December 11, 2000, the same day that the pardon application was delivered to the White House, the Rich pardon became a topic of discussion between President Clinton and Israeli Prime Minister Ehud Barak. One can only speculate as to whether this was orchestrated or an extraordinary coincidence. Barak's involvement in the lobbying campaign was secured by Avner Azulay of the Rich Foundation. On May 13, 2001, Barak responded to a March 8, 2001, inquiry by the Committee concerning his involvement in the Rich pardon. As he stated in his letter:

Few months ago [sic] I was approached by the chairman of the Rich Foundation in Israel. The chairman, Mr. Azoulay [sic] is a man I know [sic] for many years, who had contributed a lot to the security of the State of Israel for its philanthropic activities in the fields of healthcare, education and culture.

Mr. Azoulay [sic] asked me to raise Mr. Rich case with President Clinton. I raised the subject with President Clinton several times (probably three) in the course of routine telephone conversations during the last two or three months of his presidency and made a personal recommendation to him to consider the case.<sup>652</sup>

The first of these three telephone conversations between Barak and Clinton concerning clemency for Marc Rich took place on December 11, 2000. The notes of the conversation taken by National Security Council staff indicate Prime Minister Barak raised the matter towards the end of the nineteen-minute conversation:

Barak: Okay, thank you. One last remark. There is an American Jewish businessman living in Switzerland and making a lot of philanthropic contributions to Israeli institutions and activities like education, and he is a man called Mark [sic] Rich. He violated certain rules of the game in the United States and is living abroad. I just wanted to let you know that here he is highly appreciated for his support of so many philanthropic institutions and funds, and that if I can, I would like to make my recommendation to consider his case.

Clinton: I am going to take all of them up at the same time. I know about that case because I know his ex-wife. She wants to help him, too. If your ex-wife wants to help you, that's good.

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<sup>652</sup> Letter from Ehud Barak, Prime Minister, Israel, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (May 13, 2001) (Exhibit 99).

Barak: Oh. I know his new wife only, an Italian woman, very young.  
Okay. So, Mr. President, thank you very much. We will be in touch.<sup>653</sup>

As this exchange indicates, President Clinton may have already heard of the Marc Rich matter because of some contact with Denise Rich. It is unclear, however, when this contact occurred or in what context it occurred. It is also possible that President Clinton discussed with Denise Rich her ex-husband's pardon over the phone. Phone records reflect a number of telephone calls between Rich and the White House.<sup>654</sup> It may also be that the President discussed the Marc Rich matter with Beth Dozoretz, who visited the White House on numerous occasions and placed numerous phone calls prior to the Barak's first phone call. In any event, it is clear from the transcript of this conversation that President Clinton was already aware of the Marc Rich pardon effort when he first spoke with Prime Minister Barak.

There were additional lobbying contacts made with the White House on the Marc Rich matter on December 11. That same day, former Israeli Prime Minister Shimon Peres contacted President Clinton about the Marc Rich case. Presumably, this call, like the call from Prime Minister Barak, was initiated by Avner Azulay. Also on December 11, 2000, President Clinton attempted to call Beth Dozoretz.<sup>655</sup> It is unclear, from available documentary evidence, whether Dozoretz successfully spoke with the President, or what they spoke about. However, it is clear that Dozoretz and President Clinton discussed Marc Rich at some point in the days around when the petition was filed. In this conversation, President Clinton told Dozoretz that Quinn should make his case to the White House Counsel's Office. Finally, as discussed above, on December 12, 2000, Elie Wiesel visited the White House and may have raised the Rich pardon with a member of the White House staff.

## **2. Quinn Was Likely Legally Prohibited from Lobbying the White House**

When Jack Quinn filed the Marc Rich pardon petition with the White House and contacted White House staff regarding the pardon, he violated Executive Order 12834. On January 20, 1993, the first day of the new administration, President Clinton signed into law Executive Order 12834.<sup>656</sup> The order prohibited persons who had worked for the administration from lobbying the administration for a five-year period.<sup>657</sup> In fact, Jack Quinn had a hand in writing this regulation. Quinn had left the White House in February of 1997, and was therefore under the prohibition when he submitted the pardon petition. Beth Nolan testified that when Quinn brought the pardon application to the White House, she raised the issue of his eligibility to represent someone before the White House.<sup>658</sup> According to Nolan, Quinn responded to her concerns by telling her that he "had obtained a legal opinion that it was permissible for him to

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<sup>653</sup> Verbatim notes of transcript of telephone conversation between President William J. Clinton and Ehud Barak, Prime Minister, Israel (Dec. 11, 2000)) (Exhibit 148).

<sup>654</sup> See, e.g., Verizon Document Production (Telephone calls from Denise Rich to the White House, Dec. 9, 1999); Qwest Document Production (Telephone call from Denise Rich to the White House, Feb. 16, 2000).

<sup>655</sup> NARA Document Production (White House record of attempted call between Dozoretz and President Clinton).

<sup>656</sup> Exec. Order No. 12,834; 58 Fed. Reg. 5,911 (1993) (Exhibit 149).

<sup>657</sup> *Id.*

<sup>658</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 324 (Mar. 1, 2001) (testimony of Beth Nolan, former Counsel to the President, the White House).



represent someone in a pardon application.”<sup>659</sup> Kathleen Behan also told Committee staff that Quinn told Nolan he could act “pursuant to the exception for representations like this.”<sup>660</sup> In fact, Quinn does not appear to have obtained a “legal opinion.” Rather, it appears that he exchanged brief e-mails with Kathleen Behan. Behan’s entire “legal opinion” appears to be a two-sentence e-mail titled “Re: exec order 12834.” Behan stated, “Certainly the plain language you have cited would not preclude your participation. I’d be happy to look at the whole order.”<sup>661</sup> Nolan also testified that she “asked one of [her] associate counsels to look at the question independently and got the answer back that Quinn’s work did meet the exception.”<sup>662</sup>

Executive Order 12834 prohibits lobbying of the executive branch agency for which the person was employed for a five-year period. The exception to this rule referred to by Quinn reads as follows:

[T]he term “lobby” does not include: . . . (2) communicating or appearing with regard to a Judicial proceeding, or a criminal or civil law enforcement inquiry, investigation or proceeding (but not with regard to an administrative proceeding) or with regard to an administrative proceeding to the extent that such communications or appearances are made after the commencement of and in connection with the conduct or disposition of a Judicial proceeding[.]<sup>663</sup>

Quinn testified to the Committee that he believed he was within this exception when he lobbied the White House on behalf of Marc Rich. In response to a question from Congressman LaTourette, Quinn stated, “there was, as you’ve heard, an indictment pending in the Southern District of New York, so there was a judicial proceeding that had been commenced.”<sup>664</sup>

In contradiction of Quinn, ethics expert Stephen Gillers of New York University law school says that Quinn has twisted this exception beyond its original intent. Gillers explains that the provision, known as the “judicial exception,” is boilerplate for government ethics regulations and laws. It is meant for former government employees who are advocates in court, acting as attorneys in the traditional sense. According to Gillers:

The problem with Quinn's efforts to use that loophole is that the president, in exercising his pardon power, is not performing in a judicial capacity . . . . He is performing in an executive capacity. And the pardon function does not enjoy any of the safeguards that led to the creation of the judicial exception. There is no judge, there is no adversary process necessary and there is no sunshine. . . . I

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<sup>659</sup> *Id.*

<sup>660</sup> Interview with Kathleen Behan, Partner, Arnold & Porter (Feb. 27, 2001).

<sup>661</sup> Jack Quinn Document Production (E-mail from Kathleen Behan, Partner, Arnold & Porter, to Jack Quinn (Dec. 7, 2000)) (Exhibit 150).

<sup>662</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 324 (Mar. 1, 2001) (testimony of Beth Nolan, former Counsel to the President, the White House).

<sup>663</sup> Exec. Order No. 12,834; 58 Fed. Reg. 5,911 (1993) (Exhibit 149).

<sup>664</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 153 (Feb. 8, 2001) (testimony of Jack Quinn).

don't think any reasonable interpretation of the language, in light of the history of this exception, can support his claim[.]<sup>665</sup>

Quinn's claim that he was appearing with regard to a "judicial proceeding" is not credible. Quinn was appearing to obtain a pardon, which is not a judicial power, but rather, is an executive power. If Quinn had been lobbying the President to intervene and force the Justice Department to drop criminal charges against Rich, his argument might be more sound. Quinn's claim was also severely undercut by a ruling in Federal Court that he and his colleagues were acting principally as lobbyists in the Rich case, rather than as attorneys.<sup>666</sup> As Judge Chin held in that decision:

Although Quinn may be an excellent attorney, he was preceded by series of excellent attorneys; clearly, he was not hired for his ability to formulate better legal arguments or write better briefs. To the extent it contained legal arguments at all, the [pardon] Petition made the same arguments that Rich and his prior attorneys had been presenting, unsuccessfully, to the Southern District for almost 17 years. Rather, Quinn was hired because he was "Washington wise" and understood "the entire political process." He was hired because he could telephone the White House and engage in a 20-minute conversation with the President. He was hired because he could write the President a "personal note" that said "I believe in this cause with all my heart," and he would know that the President would read the note and give it weight.

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The public relations consultants and media experts here were not helping the lawyers prepare for litigation. It was the other way around, as the lawyers were being used principally to put legal trappings on what was essentially a lobbying and political effort.<sup>667</sup>

It should also be noted that Quinn's position is diametrically opposed to Hugh Rodham's view of his work lobbying for pardons. Rodham received two large contingency fees for his work in lobbying for a pardon for Glenn Braswell and a commutation for Carlos Vignali. Florida bar rules prohibit lawyers from receiving contingency fees in criminal matters. When questioned about this matter, Rodham took the position that his contingency fees were permissible, because his appearance before the White House was a lobbying matter, not a criminal matter.

## **E. The Lobbying Effort**

After the initial filing of the pardon petition, the Marc Rich legal team began a coordinated campaign to lobby the White House on the Rich and Green pardons. These contacts

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<sup>665</sup> James V. Grimaldi, *In Rich Pardon Case, Did Quinn Violate the Ethics Rule He Wrote?*, WASH. POST, Feb. 5, 2001, at E4.

<sup>666</sup> *In re Grand Jury Subpoenas*, No. M11-189 (DC) (S.D.N.Y. 2001).

<sup>667</sup> *Id.* at 41-42.

ranged from telephone calls from Jack Quinn to Beth Nolan, to personal appeals made by Denise Rich and Beth Dozoretz to the President, to calls from other lawyers to staff they knew at the White House. The apparent goal of this campaign was to raise the Rich pardon as frequently as possible and keep it as prominent as possible in the White House, without letting anyone outside of the White House know of the effort.

## **1. Quinn's Contacts with Bruce Lindsey in Belfast**

Immediately after submitting the pardon application, Jack Quinn began to personally lobby the White House on behalf of Marc Rich. On December 13, 2000, Jack Quinn traveled to Belfast, Northern Ireland, with President Clinton's delegation for the peace talks. During this trip, Quinn took the opportunity to raise the Marc Rich pardon with Bruce Lindsey, who was also on the trip. But the first reaction by the Deputy White House Counsel was not positive: "Mr. Quinn asked me if I had gotten his packet of material on Mr. Rich and Mr. Green. I told him I had. He asked me what I thought. I told him I thought they were fugitives."<sup>668</sup> Apparently, Quinn disputed Lindsey's assertion, but it is not clear what else they discussed about the Rich matter during the Belfast trip.

When Quinn returned to the United States, he sent a brief letter to Lindsey to try to address Lindsey's concerns. In his letter, Quinn summarized some of the same arguments made in the pardon petition:

You expressed a concern that they [Rich and Green] are fugitives; and I told you they are not. Here is why: Rich and Green were in fact residing in Switzerland when they were indicted in September 1983. They (understandably in my mind) chose not to return to the US for a trial in light of all that had happened to them; particularly the enormous and overwhelmingly adverse and prejudicial publicity generated, I am sure, by then U.S. Attorney Giuliani. Their failure to return to New York was not a crime and no one has ever accused them of a crime for failing to come to the US for a trial. . . . Our review of the law in the area (18 USC 1073) similarly confirms to us that their conduct is not proscribed by federal law.<sup>669</sup>

Quinn's claims were absurd, and it appears that the White House staff recognized that they were absurd. As described further below, Rich and Green were fugitives, both in the practical and the legal sense. Practically, they fled the country when they believed that their indictment was imminent, and never returned, because they knew they would be arrested. The federal government considered them fugitives, listing Rich as one of its ten most wanted international fugitives, attempting to extradite Rich and Green, and mounting complicated operations to apprehend them abroad. In the legal sense, Rich and Green clearly violated the federal statute outlawing fugitivity, which prohibits "travel[ing] in . . . foreign commerce with

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<sup>668</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 323 (Mar. 1, 2001) (testimony of Bruce Lindsey, former Deputy Counsel to the President, the White House).

<sup>669</sup> Jack Quinn Document Production (Letter from Jack Quinn to Bruce Lindsey, former Deputy Counsel to the President, the White House (Dec. 19, 2000)) (Exhibit 151).

intent . . . to avoid prosecution.”<sup>670</sup> The fact that Rich and Green were never charged with violating this statute has more to do with the fact that they were already facing dozens of felony counts, rather than any lack of evidence. It appears that Quinn’s facile arguments had little impact on Lindsey as he, and every other lawyer at the White House who considered the Marc Rich matter, continued to believe that Rich was a fugitive.<sup>671</sup>

More important, should there have been any doubt about the matter, Quinn had Denise Rich to tell him what really happened. As she succinctly explained to the American people on April 27, 2001:

Question: How did you find out [about the indictment] and what was your reaction?

Denise Rich: All I really knew was that he spoke to me and he said that “I’m having tax problems with the government. And — and I think that we are going to have to leave.” And my response was, “I am his wife. These are my children. I’m not going to split up the family.” And, so, I did what I think any wife would do. I left the country.<sup>672</sup>

There can be no clearer “cause and effect” explanation of what happened than this, and it is hard to argue that Denise Rich failed to understand, at the time, why she and her children fled from the United States. In short, Quinn’s after-the-fact rationalization is nothing more than pure dishonesty.

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<sup>670</sup> 18 U.S.C. § 1073 (2000). This section states:

Whoever moves or travels in interstate or foreign commerce with intent either (1) to *avoid prosecution*, or custody or confinement after conviction, under the laws of the place from which he flees, for a crime, or an attempt to commit a crime, punishable by death or which is a felony under the laws of the place from which the fugitive flees, or (2) to avoid giving testimony in any criminal proceedings in such place in which the commission of an offense punishable by death or which is a felony under the laws of such place, is charged, or (3) to avoid service of, or *contempt proceedings for alleged disobedience of, lawful process requiring attendance and the giving of testimony or the production of documentary evidence* before an agency of a State empowered by the law of such State to conduct investigations of alleged criminal activities, shall be fined under this title or imprisoned not more than five years, or both. For the purposes of clause (3) of this paragraph, the term ‘State’ includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States. Violations of this section may be prosecuted only in the Federal judicial district in which the original crime was alleged to have been committed, or in which the person was held in custody or confinement, or in which an avoidance of service of process or a contempt referred to in clause (3) of the first paragraph of this section is alleged to have been committed, and only upon formal approval in writing by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or an Assistant Attorney General of the United States, which function of approving prosecutions may not be delegated. (Emphases added).

<sup>671</sup> Moreover, it appears that Quinn’s own associates believed that Rich was a fugitive. Shortly after the pardon was granted, Jeff Connaughton, one of Quinn’s partners, sent him an e-mail explaining that Quinn had to make the case that “President Clinton was right to pardon Rich despite the fact that he’s a fugitive.” Jack Quinn Document Production JQ 03088 (E-mail from Jeff Connaughton, Quinn Gillespie & Associates, to Jack Quinn (Jan. 27, 2001)) (Exhibit 152).

<sup>672</sup> 20/20 (ABC television broadcast, Apr. 27, 2001).

## 2. Peter Kadzik's Lobbying Contacts with John Podesta

Peter Kadzik is a partner at the law firm Dickstein Shapiro Morin & Oshinsky LLP, the same firm as long-time Rich lawyers Michael Green and I. Lewis Libby. Kadzik was recruited into Marc Rich's lobbying campaign because he was a long-time friend of White House Chief of Staff John Podesta, dating back to law school. Kadzik had also represented Podesta in connection with Congressional and independent counsel investigations.<sup>673</sup> Over the course of his lobbying efforts for Marc Rich, Peter Kadzik had seven contacts with either Podesta or administrative staff at the White House.

On December 12, 2000, Peter Kadzik had his first telephone conversation with John Podesta relating to the Marc Rich pardon application.<sup>674</sup> In his opening testimony before the Committee, Podesta explained his initial contact with Kadzik:

My first recollection of this matter is that some time in mid-December 2000 I returned a call from Mr. Peter Kadzik who has been a friend of mine since we attended law school together in the mid-1970's. I remember that Mr. Kadzik told me that his firm represented Mr. Rich and Mr. Green in connection with a criminal case and that Jack Quinn was seeking a Presidential pardon from them.

At that point, I was unfamiliar with the Rich/Green case. Mr. Kadzik asked me who would be reviewing pardon matters at the White House. I recalled that I told him that the White House Counsel's office was reviewing pardon applications.<sup>675</sup>

A few days after this initial contact, on December 15, 2000, Kadzik sent Podesta a copy of Jack Quinn's cover letter to the pardon application, which provided a summary of Marc Rich's case.<sup>676</sup> Podesta testified that he forwarded this on to the White House Counsel's Office.<sup>677</sup> Kadzik next contacted Podesta on January 2, 2001.<sup>678</sup> According to Podesta, Kadzik "asked, in light of the pardons that Mr. Clinton had issued around Christmas, whether any more pardons were likely to be considered."<sup>679</sup> Podesta told Kadzik that President Clinton "was

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<sup>673</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 445-46 (Mar. 1, 2001) (testimony of Peter Kadzik, Partner, Dickstein Shapiro Morin & Oshinsky).

<sup>674</sup> Dickstein Shapiro Morin & Oshinsky Document Production DSM0059-0069 (Billing records from Dickstein Shapiro Morin & Oshinsky to Robert Fink (Dec. 12, 2000, and Feb. 13, 2001) (Exhibit 143).

<sup>675</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 316 (Mar. 1, 2001) (testimony of John Podesta, former Chief of Staff to the President, the White House).

<sup>676</sup> *Id.* See also Dickstein Shapiro Morin & Oshinsky Document Production DSM0005 (Letter from Peter Kadzik, Partner, Dickstein Shapiro Morin & Oshinsky, to John Podesta, former Chief of Staff to the President, the White House (Dec. 15, 2000)) (Exhibit 153).

<sup>677</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 316 (Mar. 1, 2001) (testimony of John Podesta, former Chief of Staff to the President, the White House).

<sup>678</sup> Dickstein Shapiro Morin & Oshinsky Document Production DSM0059-0069 (Billing records from Dickstein Shapiro Morin & Oshinsky to Robert Fink (Dec. 12, 2000, and Feb. 13, 2001)) (Exhibit 143).

<sup>679</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 316 (Mar. 1, 2001) (testimony of John Podesta, former Chief of Staff to the President, the White House).

considering additional pardons and commutations, but it was unlikely that one would be granted under the circumstances he had briefly described unless the counsel's office, having reviewed the case on the merits, believed that some real injustice had been done."<sup>680</sup> Apparently, Kadzik also informed his partner Michael Green that the Rich case was pending, and would be considered within the next week, but that they needed a supporter in the Counsel's Office. As Fink explained to Jack Quinn:

Mike spoke with his partner [Kadzik] today who spoke to Podesta who said, in effect, that we are still in the running but we are fourth and long. It seems that there are many requests and only the ones being pushed by Beth or Bruce are being followed, so we have to get one of them strongly behind this. They have to become advocates.<sup>681</sup>

Fink sent a similar message to Avner Azulay:

I learned from Mike Green today that our case is still pending and is part of a large group that may be considered at the end of the week. But his friend [Kadzik] told him that we need a rabbi among the people in the counsel's office (it seems that Mike's friend [Kadzik] believes we do not have one yet), so I have written Jack to ask him to follow up with the two people there (Beth and Bruce), both of whom received our papers, both of whom he knows well and both of whom he has already discussed this matter [sic].<sup>682</sup>

On January 6, 2001, Kadzik met with Podesta in the White House.<sup>683</sup> At this meeting, Podesta conveyed the collective view of the White House Counsel's Office on the potential pardon of Marc Rich and Pincus Green:

I told him that I, along with the entire White House staff counsel, opposed it and that I did not think it would be granted. At that point, I believed that the pardons would not be granted in light of the uniform staff recommendation to the contrary and that little more needed to be done on the matter.<sup>684</sup>

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<sup>680</sup> *Id.*

<sup>681</sup> Dickstein Shapiro Morin & Oshinsky Document Production DSM0370 (E-mail from Robert Fink to Jack Quinn and Michael Green, Partner, Dickstein Shapiro Morin & Oshinsky (Jan. 2, 2001)) (Exhibit 154).

<sup>682</sup> Piper Marbury Document Production PMR&W 00108 (E-mail from Robert Fink to Avner Azulay, Director, Rich Foundation (Jan. 3, 2001)) (Exhibit 155). Fink's use of the term "rabbi" caused some confusion for Azulay, who responded "I don't understand the comment about the rabbi. Our book is full of rabbis. Could you get more specific?" *Id.* Fink then responded, "Yes, by rabbi I meant someone inside who is in favor of the pardon and working for it to be granted. Sorry about the lack of clarity, it is just common usage here." *Id.*

<sup>683</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 317 (Mar. 1, 2001) (testimony of John Podesta, former Chief of Staff to the President, the White House). *See also* Dickstein Shapiro Morin & Oshinsky Document Production DSM0059-0069 (Billing records of Dickstein Shapiro Morin & Oshinsky to Robert Fink (Dec. 12, 2000, and Feb. 13, 2001)) (Exhibit 143).

<sup>684</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 317 (Mar. 1, 2001) (testimony of John Podesta, former Chief of Staff to the President, the White House).

Notwithstanding Podesta's negative views, and the discouraging news on the White House's consideration of the Rich pardon, Kadzik placed one more call to Podesta on January 16, 2001.<sup>685</sup> According to Podesta, Kadzik told him that "he had been informed that the President had reviewed the submissions Mr. Quinn had sent in and was impressed with them and was once again considering the pardon."<sup>686</sup> Podesta told Kadzik that he still opposed the pardon and did not believe it would be granted.<sup>687</sup>

Taking John Podesta's testimony at face value, it does not appear that the Rich team's Kadzik approach was successful. Podesta, like Bruce Lindsey and the other key staff, appears to have been steadfastly against the pardon. However, as is discussed in more detail below, notwithstanding their strong opposition, White House staff did not give their best efforts to dissuade President Clinton from granting the Rich and Green pardons.

### **3. Further Contacts Between Jack Quinn and White House Staff**

After Peter Kadzik spoke to John Podesta, and learned that Rich needed a "rabbi" among the White House staff to press the case for a pardon, Robert Fink decided that they needed to press their case as strongly as possible at both the staff level and with the President.<sup>688</sup> Fink then apparently asked Jack Quinn to make another call to the White House.<sup>689</sup> Quinn agreed to make the call,<sup>690</sup> and spoke to Beth Nolan on January 3, 2001.<sup>691</sup> He reported back to Fink, Marc Rich, Avner Azulay, and Behan later on January 3:

I just got off the phone with Beth Nolan, the White House Counsel. She told me that her office will do the next "reassessment" of our and other applications on Friday [January 5]. I impressed upon her that our case is "sui generis" only in that M[arc] R[ich] was indicted but did not stand trial and then elaborated at some length on the circumstances of MR's decision not to return — the facts that Rudy was new, was trying to make a reputation, overcharged in the most gross way (and in ways that would not stand today — RICO, mail/wire fraud, etc.) and that MR, seeing the mountain of adverse publicity generated by the US Atty's ofc and the disproportionate charges, made the choice anyone would make, i.e., not to return. She responded that this is still a tough case — that the perception will nevertheless be that MR is in some "sense" a fugitive. I explained why he is not. I told her that I want an opportunity to know, before a final decision, if there are

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<sup>685</sup> Dickstein Shapiro Morin & Oshinsky Document Production DSM0059–0069 (Billing records from Dickstein Shapiro Morin & Oshinsky to Robert Fink (Dec. 12, 2000, and Feb. 13, 2001)) (Exhibit 143).

<sup>686</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 317 (Mar. 1, 2001) (testimony of John Podesta, former Chief of Staff to the President, the White House).

<sup>687</sup> *Id.*

<sup>688</sup> Piper Marbury Document Production PMR&W 00106–07 (E-mail from Robert Fink to Avner Azulay, Director, Rich Foundation (Jan. 3, 2001)) (Exhibit 156).

<sup>689</sup> Piper Marbury Document Production PMR&W 00108 (E-mail from Robert Fink to Avner Azulay, Director, Rich Foundation (Jan. 3, 2001)) (Exhibit 155).

<sup>690</sup> Piper Marbury Document Production PMR&W 00109 (E-mail from Jack Quinn to Robert Fink (Jan. 3, 2001)) (Exhibit 157).

<sup>691</sup> Arnold & Porter Document Production A0864 (E-mail from Jack Quinn to Avner Azulay, Director, Rich Foundation (Jan. 3, 2001)) (Exhibit 158).

things we have not said or done that should be said or done. She promised me that opportunity. I asked if she would see us to review the matter in person and she said she would if there was reason to think, after her reassessment, that that would be fruitful. I told her, finally [sic], that I intend to have one more conversation with POTUS before this is finalized in order to make the case to him, focusing in particular on his appreciation of what an overly-zealous prosecutor can do to make a fair trial, in court or in the court of public opinion, impossible. Lastly, I told her that, if they pardon J[onathan] P[ollard], then pardoning MR is easy, but that, if they do not pardon JP, then they should pardon MR. In the last connection, she affirmed that they have heard from people in or connected to the G[overnment] O[f] I[srael].<sup>692</sup>

After this call, Jack Quinn also tried to bring another former White House staffer into the Marc Rich pardon effort. Cheryl Mills was the former Deputy Counsel to the President, and was now an executive at Oxygen Media in New York. However, Mills was still influential in the Clinton White House, and Quinn brought his arguments to her. At some point before January 5, 2001, Quinn apparently called Mills and discussed the Rich pardon with her. Then, on January 5, 2001, Mills was in the White House for a party for former White House Counsels.<sup>693</sup> On January 5, Quinn sent a new letter to the President outlining his key arguments on the Rich pardon.<sup>694</sup> He sent copies of this letter to Beth Nolan, Bruce Lindsey, and Mills.<sup>695</sup> Quinn explained that he sent the material to Mills because she was:

A person who, after some 7 years at the White House, was enormously well regarded and trusted, well might at some point be consulted on this. I had raised with her the fact that I was pursuing the pardon as I did with others from time to time to just bounce ideas off. But also I was hopeful, knowing of her relationship with Ms. Nolan and Mr. Lindsey and the President, that as any good lawyer would, that as this thing progressed, if it were progressing, that I would get some sense of how people were reacting to different arguments in order that I might be in a position to know better what concerns the folks advising the President might have so that I might address those concerns.<sup>696</sup>

Then, at the party for former White House Counsels later that day, where the former counsels, including Abner Mikva, Lloyd Cutler, and Bernard Nussbaum were filming a video for President Clinton, Quinn raised the Rich pardon with Nolan again. At that time, Mills told Quinn to “stop pestering” Nolan about the Rich pardon.<sup>697</sup> While Mills had received information about the

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<sup>692</sup> *Id.*

<sup>693</sup> Interview with Cheryl Mills, former Associate Counsel to the President, the White House (Mar. 19, 2001).

<sup>694</sup> Jack Quinn Document Production (Letter from Jack Quinn to President William J. Clinton (Jan. 5, 2001)) (Exhibit 159).

<sup>695</sup> Piper Marbury Document Production PMR&W 00153 (E-mail from April Moore, Secretary to Jack Quinn, Quinn Gillespie & Associates, to Robert Fink and Kathleen Behan, Partner, Arnold & Porter (Jan. 5, 2001)) (Exhibit 160).

<sup>696</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 331 (Mar. 1, 2001) (testimony of Jack Quinn).

<sup>697</sup> *Id.* at 333.



pardon from Quinn, she was not familiar enough with the issue to discuss the merits with Quinn.<sup>698</sup>

While Quinn apparently did not make much progress with Mills at the January 5 party, he did lay important groundwork for the last day of the Clinton Administration, when Cheryl Mills would be the most supportive voice for the Rich pardon among White House staff.

#### **4. Initial Discussions Between the White House and Justice Department**

When he met with Eric Holder on November 21, 2000, Jack Quinn had told Holder that he was going to urge the White House to contact him about the Rich pardon. At the time, Holder had indicated that he looked forward to contact from the White House. True to his word, Quinn did suggest that the White House contact Holder. Quinn recognized that what Holder said to the White House would be crucial to whether or not Rich received a pardon. In an e-mail on Christmas 2000, Quinn told his colleagues that “[t]he greatest danger lies with the lawyers. I have worked them hard and I am hopeful that E. Holder will be helpful to us. But we can expect some outreach to NY.”<sup>699</sup> Apparently, Quinn underestimated just how helpful Holder would be, keeping the Rich pardon completely to himself, and keeping his prosecutors in New York from even knowing about the effort to pardon Rich, much less asking for their opinion.

During the first week of January, Beth Nolan met with Holder, and asked for his opinion regarding a number of clemency matters. During this conversation, Nolan brought up Marc Rich’s name. Holder told Nolan that he was neutral.<sup>700</sup> Later, at the Committee’s February 8 hearing, Holder explained that when he used the term “neutral,” he was trying to convey that he “didn’t have the basis to form an opinion.”<sup>701</sup> However, it is unclear why, if he was trying to tell Nolan that he did not know enough about the Rich case to have an opinion, Holder simply did not say that. In addition, it is strange that Holder would start out with a position of “neutral” on the Rich case, knowing what he did, namely, that Rich was a fugitive from justice, that his had been one of the largest tax cases in history, and that the prosecutors in New York would not even meet with his lawyers. However, late on January 19, 2001, Holder would revise his opinion of the Rich pardon from “neutral” to “neutral, leaning towards favorable,” on the basis of a third-hand account of Prime Minister Barak’s call to President Clinton.

Holder’s default position of neutrality on the Marc Rich case is especially peculiar in light of express Justice Department policy regarding grants of clemency to fugitives. In the case of Fernando Fuentes Coba, Pardon Attorney Roger Adams rejected Fuentes’ petition for clemency because Fuentes was a fugitive from the United States. Adams stated that:

Mr. [Fuentes] Coba is ineligible to apply for a presidential pardon. Pursuant to 28 C.F.R. § 1.2 . . . “[n]o petition for pardon should be filed until the expiration of a

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<sup>698</sup> Interview with Cheryl Mills, former Associate Counsel to the President, the White House (Mar. 19, 2001).

<sup>699</sup> Arnold & Porter Document Production A0844 (E-mail from Jack Quinn to Avner Azulay, Director, Rich Foundation *et al.* (Dec. 25, 2000)) (Exhibit 36).

<sup>700</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 205 (Feb. 8, 2001) (testimony of Eric Holder, former Deputy Attorney General, Department of Justice). *See also id.* at 354 (Mar. 1, 2001) (testimony of Beth Nolan, former Counsel to the President, the White House).

<sup>701</sup> *Id.* at 205 (Feb. 8, 2001) (testimony of Eric Holder, former Deputy Attorney General, Department of Justice).

waiting period of at least five years after the date of the release of the petitioner from confinement . . . .” Because Mr. Coba has served none of his prison sentence, he fails to meet this most basic eligibility requirement for pardon consideration. Moreover, the Department of Justice has consistently declined to accept pardon petitions from individuals, such as Mr. Coba, who are fugitives, since the pardon process assumes the Government’s ability to implement either of the President’s possible decisions regarding a petition — that is, a denial of clemency as well as a grant of clemency. Put another way, it is not reasonable to allow a person to ask that the President grant him a pardon which, if granted, would have the effect of eliminating the term of imprisonment to which he has been sentenced, while at the same time insulating himself from having to serve the sentence if the pardon is denied.<sup>702</sup>

The same principles should have applied to the Marc Rich pardon. The fact that Eric Holder disregarded this policy, as well as every other warning sign about the Rich case, raises further questions about his motivations in the Rich case.

## **5. January 8, 2001, Call Between President Clinton and Ehud Barak**

The second week in January started with another call from Prime Minister Barak on the Rich pardon. Towards the end of the eighteen-minute call on January 8, 2001, Barak mentioned the Marc Rich pardon for a second time. It appears that this second conversation was prompted by a meeting between Marc Rich and Prime Minister Barak. A January 12, 2001, e-mail from Avner Azulay to Jack Quinn, Marc Rich, Robert Fink, and Kathleen Behan included the subject line “telecons to potus.”<sup>703</sup> As Azulay wrote, “Following mr’s mtg with the pm — the latter called potus this week. Potus said he is very much aware of the case, ‘that he is looking into it and that he saw 2 fat books which were prepared by these people.’ Potus sounded positive but maede [sic] no concrete promise.”<sup>704</sup> Azulay’s summary closely tracks the discussion between the President and the Prime Minister as recorded by the National Security Council staff:

Prime Minister Barak: Let me tell you last but not least two names I want to mention. [Redacted] The second is Mark [sic], the Jewish American.

President Clinton: I know quite a few things about that. I just got a long memo and am working on it. It’s best that we not say much about that.

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<sup>702</sup> Vivian Mannerud Document Production (Letter from Roger Adams, Pardon Attorney, U.S. Department of Justice, to Lonnie Anne Pera, Counsel to Vivian Mannerud, Zuckert Scoutt & Rasenberger (Nov. 7, 2000)) (Exhibit 161).

<sup>703</sup> Piper Marbury Document Production PMR&W 00166 (E-mail from Avner Azulay, Director, Rich Foundation, to Jack Quinn *et al.* (Jan. 12, 2001)) (Exhibit 162).

<sup>704</sup> *Id.*

Prime Minister Barak: Okay. I understand. I'm not mentioning it in any place.

President Clinton: I understand.

Prime Minister Barak: I believe it could be important [gap] not just financially, but he helped Mossad on more than one case.

President Clinton: It is a bizarre case, and I am working on it.

Prime Minister Barak: Okay. I really appreciate it.<sup>705</sup>

Two facts about this telephone conversation stand out. First, it appears that President Clinton told Prime Minister Barak to “not say much” about the Rich matter. It is difficult to know exactly what the President meant by this comment, but one interpretation is that President Clinton did not want to discuss the Rich matter with Barak when there were a number of staff on the line taking notes about the conversation. Perhaps most important, if he was leaning towards pardoning Rich, he probably understood that if this became known, the public outcry would have made the pardon politically untenable. Indeed, it is difficult to think of any other reason why President Clinton would tell Prime Minister Barak to “not say much” about Rich.

Another critical element of the telephone call is Barak's statement that “I believe it could be important [gap] not just financially, but he helped Mossad on more than one case.” Read literally, Barak's statement suggests that the Rich pardon had future financial implications for Barak, and perhaps President Clinton as well. It is also possible, though, that Prime Minister Barak was referring to Rich's past financial assistance to Israel. While the Committee does not have enough information to confirm that Barak or Clinton took action on behalf of Rich in exchange for future payment, Barak's comments raise this possibility.

## **6. “The HRC Option”**

The Marc Rich legal team used a number of approaches to influence President Clinton and his staff. One approach that was considered was for then-First Lady Hillary Clinton to become involved. There is now, however, a uniform denial that she ever participated in the Marc Rich pardon process.

Beginning in late December, the lawyers representing Rich had a number of discussions in which they debated the merit of asking Hillary Clinton for help with the Rich pardon. Apparently the first discussions regarding Mrs. Clinton started around December 26, 2000, when Robert Fink sent the following e-mail to Quinn, with copies to Marc Rich, Kitty Behan, and Avner Azulay: “Kitty and I think the best person to call Hilary [sic] (if it makes sense to call her

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<sup>705</sup> Verbatim notes of transcript of telephone conversation between President William J. Clinton and Ehud Barak, Prime Minister, Israel (Jan. 8, 2001)) (Exhibit 148).

at all) may well be Denise. She is in Aspen; let me know if you need the number.”<sup>706</sup> Later that day, Fink e-mailed the same group again:

Of all the options we discussed, the only one that seems to have real potential for making a difference is the HRC option and even that has peril if not handled correctly. I assume, and am emphasizing that this is an assumption, that we want Avner to speak to Abe [Foxman] about the support this will get in NY to see if Abe could make the necessary representation to HRC.<sup>707</sup>

The following day, December 27, 2000, Avner Azulay weighed in:

I have been advised that HRC shall feel more at ease if she is joined by her elder senator of NY who also represents the jewish [sic] population. The private request from DR shall not be sufficient. It seems that this shall be a prerequisite from her formal position [sic].<sup>708</sup>

Robert Fink passed this recommendation on to Gershon Kekst, who had been advising the Rich team with media relations. Kekst seemed to be taken with the idea, and recommended asking Senator Schumer’s campaign contributors to “lean” on him:

Good point. Can [Q]uinn tell us who is close enough to lean on [S]chumer?? I am certainly willing to call him, but have no real clout. Jack might be able to tell us quickly who the top contributors are.....maybe Bernard Schwartz??<sup>709</sup>

Jack Quinn apparently signed onto the concept of involving the First Lady in the Rich pardon effort. On December 28, 2000, Robert Fink apparently contacted Quinn about the proposal, and sent the following confirming e-mail to Quinn:

I understand I am to call DR and ask her to call HRC, but I wanted to talk to you first to make sure that makes sense and to determine what you thought DR should be saying, not just what she should be asking.<sup>710</sup>

It appears that Robert Fink discussed the “HRC option” with Denise Rich, and that Denise Rich did not react well to the idea. He sent the following e-mail to Azulay and Marc Rich on December 28, describing his conversation with Denise Rich:

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<sup>706</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00072 (E-mail from Robert Fink to Jack Quinn *et al.* (Dec. 26, 2000)) (Exhibit 163).

<sup>707</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00075 (E-mail from Robert Fink to Jack Quinn *et al.* (Dec. 26, 2000)) (Exhibit 164).

<sup>708</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00080 (E-mail from Avner Azulay, Director, Rich Foundation, to Jack Quinn *et al.* (Dec. 27, 2000)) (Exhibit 165).

<sup>709</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00083 (E-mail from Gershon Kekst, President, Kekst and Co., to Robert Fink (Dec. 27, 2000)) (Exhibit 135).

<sup>710</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00401 (E-mail from Robert Fink to Jack Quinn (Dec. 28, 2000)) (Exhibit 166).

I spoke to DR who was adamantly against the proposal. She is convinced it would be viewed badly by the recipient. Nothing good will come of the overture even with a good word from anyone in NY. She said she is convinced of this and so is her friend who has advised DR not to discuss it in front of HRC. I spoke to MR both before the call and in the middle of this email and he now agrees we should do nothing on this topic.<sup>711</sup>

From this e-mail, it appears that the proposal to lobby Hillary Clinton was presented to Denise Rich, who in turn discussed it with Beth Dozoretz. Dozoretz advised Rich not to lobby Hillary Clinton on the pardon, and Denise Rich rejected the plan. In turn, Marc Rich decided not to press the matter any further. However, Jack Quinn and Robert Fink still saw merit in the “HRC option,” and continued to pursue it. Quinn told Fink that he thought “the friend [Dozoretz] is naïve to think this will not be discussed in front of her [Hillary Clinton].”<sup>712</sup> Fink replied that “I cannot help but think they are right. She has something to lose and little to gain and may not want anything which will affect her new position.”<sup>713</sup> Quinn also stated, “I continue to think it most likely HRC would be at least informed before anything positive happens, given the possibility of a Giuliani/NY press reaction.”<sup>714</sup> Fink then replied to Quinn’s suggestion: “I will call Avner to see what he thinks. . . . DR was very sure speaking to HRC was a mistake and told me that Beth warned [sic] her not to raise the issue while HRC was in ear shot. Still want to contact HRC?”<sup>715</sup> Quinn replied:

[I]t’s a tough call, no doubt. [I] just think HE will know the calculation you mention and therefore she will become aware it is pending. If this is right, do we want her to hear about it first in that way or from someone (assuming we have someone) who can put it to her in the context we need?<sup>716</sup>

By January 2, 2001, Fink was apparently convinced, and suggested to Quinn that he call Hillary Clinton:

Frankly, I think you are the best person at this point. You signed the petition and the letter and know the case better than anyone else who could call. DR is out and probably could only make a personal appeal. You know of Abe Foxman and of the Israeli connection and of all the giving and the Brooklyn connection (Pinky). So my vote is that you call her.<sup>717</sup>

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<sup>711</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00087 (E-mail from Robert Fink to Avner Azulay, Director, Rich Foundation, and Marc Rich (Dec. 28, 2000)) (Exhibit 167).

<sup>712</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00097–98 (E-mail from Jack Quinn to Robert Fink (Dec. 28, 2000)) (Exhibit 36).

<sup>713</sup> *Id.*

<sup>714</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00089 (E-mail from Jack Quinn to Robert Fink (Dec. 30, 2000)) (Exhibit 168).

<sup>715</sup> *Id.*

<sup>716</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00097–98 (E-mail from Jack Quinn to Robert Fink (Dec. 31, 2000)) (Exhibit 36).

<sup>717</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00102 (E-mail from Robert Fink to Jack Quinn *et al.* (Jan. 2, 2001)) (Exhibit 169).

But, it appears that by later on January 2 and on January 3, Marc Rich and Avner Azulay had decided against an approach to Hillary Clinton. First, around January 2, Marc Rich apparently spoke to Denise Rich. Azulay reported that “her impression — from Beth is that HRC shall try to be protective of her husband and stay out of potential trouble.” The following day, January 3, Azulay e-mailed Quinn, Fink, Behan and Rich, and stated that:

Looking from the sideline and hearing all this — I would like to forward the idea that perhaps we should just leave HRC alone. By initiating a call to her we are “saying in a way that there is a problem here . . .”, and in the process we might create a problem out of speculations on her reaction. I don’t think we have any positive knowledge that she is for or against, only assumptions. Potus should deal with this himself — and if it does then intervene with all the arguments etc.<sup>718</sup>

Apparently, Azulay’s suggestion settled the matter, as there was no more discussion of the “HRC option.” At the Committee’s February 8 hearing, Jack Quinn testified that “I’m confident that I never communicated with the First Lady about this, and I don’t believe that anyone else did.”<sup>719</sup> In addition, the Committee has received no documents suggesting that the First Lady was actually contacted by anyone connected to Marc Rich or that the First Lady offered any opinion on the Marc Rich pardon.

## **F. The Final Days of the Marc Rich Lobbying Effort**

### **1. Communications Between Peter Kadzik and John Podesta**

As the end of the Clinton presidency approached, the Marc Rich legal team increased the intensity of its lobbying efforts. Peter Kadzik called the White House four out of the final five days of the Administration to see what progress had been made on the Rich pardon. On January 16, 2001, he spoke to his friend and sometime client, White House Chief of Staff John Podesta. Kadzik asked Podesta what the status of the Rich pardon was, and what recommendation the White House staff would make. After a conversation with Podesta, Kadzik relayed the results of that conversation to his partner at Dickstein Shapiro, Michael Green. The two calls took Kadzik a total of thirty minutes.<sup>720</sup> According to an e-mail sent by Robert Fink to the rest of the Rich legal team:

[Kadzik partner] Mike Green called after speaking with Peter [Kadzik] who spoke with Podesta: it seems that while the staff are not supportive they are not in a veto mode, and that your efforts with POTUS are being felt. It sounds like you are making headway and should keep at it as long as you can. We are definitely still in the game.<sup>721</sup>

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<sup>718</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00109 (E-mail from Avner Azulay, Director, Rich Foundation, to Jack Quinn *et al.* (Jan 3, 2001)) (Exhibit 157).

<sup>719</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 257 (Feb. 8, 2001) (testimony of Jack Quinn).

<sup>720</sup> Dickstein Shapiro Morin & Oshinsky Document Production DSM0064 (Billing records of Dickstein Shapiro Morin & Oshinsky to Robert Fink (Dec. 12, 2000, and Feb. 13, 2001)) (Exhibit 143).

<sup>721</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00169 (E-mail from Robert Fink to Jack Quinn *et al.* (Jan. 16, 2001)) (Exhibit 170).

The e-mail message indicates that Podesta informed Kadzik that he and the other key White House staff did not support the Rich pardon, but at the same time, appeared to give Kadzik some encouragement, indicating that the President still might decide to grant the Rich pardon. However, when questioned about these discussions at the Committee's March 1, 2001, hearing, both Podesta and Kadzik disowned the contents of the e-mail message. Podesta described the conversation with Kadzik as follows:

He told me he had been informed that the President had reviewed the submissions Mr. Quinn had sent in and was impressed with them and was once again considering the pardon. I told him I was strongly opposed to the pardons and that I did not believe they would be granted.<sup>722</sup>

Kadzik likewise indicated that the e-mail describing his conversation with Podesta was inaccurate:

Mr. LaTourette: [T]his e-mail in particular states that Mike Green spoke with Peter, who I assume is you, who spoke with Podesta; and that Podesta told Peter that while the staff are not supportive they are not in the veto mode.

First of all, did Mr. Podesta communicate that to you on January 16<sup>th</sup>?

Mr. Kadzik: No. . . . Again, he told me he was opposed to it, that the staff was opposed to it, but no final decision had been made and again the decision was the President's.<sup>723</sup>

It is difficult to square the recollections of John Podesta and Peter Kadzik with the contents of the Robert Fink e-mail message. The e-mail message is consistent with the portrait of the White House painted by a number of other contemporaneous e-mail messages — namely that the White House staff opposed the Rich pardon, but was not fully engaged on the issue, and that the President was open to it. This is the message that the Marc Rich legal team was getting from its contacts with the White House, despite the after-the-fact characterizations from Podesta and Kadzik.

## **2. The January 16, 2001, White House Meeting Regarding Rich**

White House staff had a number of contacts with Jack Quinn and other lawyers representing Marc Rich regarding the Rich pardon in December 2000 and January 2001. Similarly, the President had contacts with individuals advocating on Rich's behalf during those two months. However, the first time that the President sat down with his staff to discuss the Rich

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<sup>722</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 317 (Mar. 1, 2001) (testimony of John Podesta, former Chief of Staff to the President, the White House).

<sup>723</sup> *Id.* at 464–66 (testimony of Peter Kadzik, Partner, Dickstein Shapiro Morin & Oshinsky).

pardon was January 16, 2001, just four days before the end of his Administration. The purpose of the January 16 meeting was for the President to discuss other clemency matters with White House staff. According to John Podesta, who was present at the meeting, President Clinton then initiated discussion of Marc Rich:

[T]he President brought up the Rich case and told us that he thought Mr. Quinn had made some meritorious points in his submission. He clearly had digested the legal arguments presented by Mr. Quinn since he made a point of noting the Justice Department had abandoned the legal theory underlying the RICO count and mentioned the Ginsburg/Wolfman tax analyses. The staff informed the President that it was our view that the pardon should not be granted.<sup>724</sup>

Podesta interpreted the President's reaction to the views of the White House staff as meaning that "he accepted our judgment and I didn't think this was a particularly active matter."<sup>725</sup> Beth Nolan, who also attended the January 16 meeting, also remembered a fairly brief discussion:

I don't recall that it was an extensive discussion. However, we were going through a number of pardon applications, and my memory is that it was a fairly brief discussion in which he heard from all of us our opposition. I didn't think it was going anywhere. . . . I did not believe that the pardon was going anywhere. He was familiar with it. He was sympathetic with it. And he was familiar with the issues, but I did not have the sense . . . at that meeting or until the 19<sup>th</sup> that he really was inclined to grant the pardon.<sup>726</sup>

While Beth Nolan interpreted the President's comments as meaning that the Rich pardon was not "going anywhere," Bruce Lindsey did not reach the same conclusion, informing the Committee, "I clearly left the meeting understanding that no decision had been made. I don't know if I knew what was in his mind."<sup>727</sup>

The account of the January 16, 2001, meeting appears to be an attempt by senior White House staff to explain why they were caught so unprepared when the President decided to grant the Marc Rich pardon three days later. As became clear on that day, White House staff knew little about the Rich case, and had not made any attempt to gather the necessary information. The ignorance of the senior White House staff meant that they were unable to provide any clear refutation of the arguments made by the Rich legal team. As explained by Beth Nolan, John Podesta, and to a lesser extent, Bruce Lindsey, they were caught unprepared because they simply did not believe that the President was going forward with the Rich pardon, based on the opposition that they expressed at the January 16 meeting. This argument explains why White House staff, while claiming to be opposed to the Rich pardon, did so little to actually keep it from being granted.

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<sup>724</sup> *Id.* at 317 (testimony of John Podesta, former Chief of Staff to the President, the White House).

<sup>725</sup> *Id.* at 325.

<sup>726</sup> *Id.* at 324–25 (testimony of Beth Nolan, former Counsel to the President, the White House).

<sup>727</sup> *Id.* at 325 (testimony of Bruce Lindsey, former Deputy Counsel to the President, the White House).



However, the defense of the White House staff does not seem to comport fully with reality. While the President listened to the White House staff as they objected to the Rich pardon, he apparently did not say anything to indicate that he actually agreed with White House staff. Rather, he clearly expressed that he was sympathetic to the Rich pardon. If the White House staff were serious about opposing the Rich pardon, they would have done more than simply express their opposition to the pardon. They would have taken the time period between January 16 and January 20 to gather information about the Rich case, and present it to the President as reasons why he should not grant the pardon. Unfortunately, White House staff never took any such steps.

### **3. The Justice Department Receives Jack Quinn's January 10 Letter**

On January 17, 2001, the letter that Jack Quinn sent to Eric Holder on January 10, 2001, finally arrived at the Justice Department. Quinn had intended to have the letter delivered to Holder by messenger, but due to a secretarial error, the letter was sent to 901 E Street, in Washington, rather than the main Justice Department headquarters building, where Holder maintained his office.<sup>728</sup> The January 10 letter from Quinn to Holder represented the only documentary information the Justice Department ever received regarding the Rich pardon. The cover letter from Quinn to Holder stated "I hope you can say you agree with this letter. Your saying positive things, I'm told, would make this happen." Attached to the letter was a copy of Quinn's January 5 letter to President Clinton, which summarized the arguments made by Quinn in the Rich pardon petition.

Between January 10 and January 17, this letter made its way from the Justice Department offices at 901 E Street to the Justice Department Executive Secretariat, which is in charge of managing the paper flow at Justice Department headquarters. Despite the fact that the letter was addressed to the Deputy Attorney General, because it obviously related to pardon matters, the letter was directed to Roger Adams, the Pardon Attorney. The Office of Pardon Attorney received the letter during the afternoon of January 18, and Adams saw it in his inbox on the morning of Friday, January 19.<sup>729</sup> Adams drafted a short response to the Quinn letter, stating that neither Marc Rich nor Pincus Green had filed a pardon petition with the Justice Department, and advising Quinn that petition forms were available upon request from his office. Adams decided not to send the letter out, and instead hold it until the following Monday. Adams explained that he did not send the letter out because he recognized Jack Quinn's name, and knew that Quinn had substantial influence as a former White House Counsel, and acknowledged that he could not be certain of what was going on at the White House. Rather than send out what amounted to a rejection letter for a person who might yet receive a pardon later that day, Adams decided to hold the letter until after President Clinton left office, when he could be certain that Rich was not going to receive a pardon. As it turned out, Adams' fears were realized, and he never did mail the rejection letter.

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<sup>728</sup> The Justice Department's Civil Division maintained offices at 901 E Street. While it is not clear why Quinn sent the letter to 901 E Street, the most obvious explanation is that Quinn's secretary had sent materials to the Justice Department Civil Division offices at 901 E Street in the past, and mistakenly assumed that Deputy Attorney General Holder had an office at 901 E Street as well.

<sup>729</sup> "President Clinton's Eleventh Hour Pardons," *Hearing Before the Senate Comm. on the Judiciary*, 107th Cong. 24 (Feb. 14, 2001) (testimony of Roger Adams, Pardon Attorney, Department of Justice).

#### 4. Final Lobbying Contacts Leading up to January 19, 2001

As the Clinton Administration entered its final days, the Rich team increased its efforts. It was well known that the President was considering granting a large batch of pardons as one of his final acts as President. In fact, during his final visit to Arkansas as President on January 17, 2001, the President acknowledged this, asking reporters, “You got anybody you want to pardon? Everybody in America either wants somebody pardoned or a national monument.”<sup>730</sup>

The Rich team increased the intensity of its lobbying campaign in the final days. First, Jack Quinn faxed a memo to Beth Nolan that purported to provide additional evidence that Rich had been singled out for prosecution. In a note at the top of the memo, Quinn wrote: “This is FYI further to the point that no one else was prosecuted.”<sup>731</sup> In fact, the memo stands for the opposite point. The memo, which was drafted by a lawyer on the Rich legal team in 1988, provided a review of enforcement actions against individuals who had violated energy regulations. The memo concluded that “[w]e have uncovered no case in which a jail sentence has been imposed for a willful violation of the PAM regulations, the conduct for which M[arc] R[ich] and P[incus] G[reen] have been indicted.”<sup>732</sup> Ironically, this memo, which was intended to provide support for the Rich case, actually weakens it. A close reading of the memo indicates that the Rich lawyers located 48 criminal cases brought for violations of the energy regulations, 14 of which resulted in jail time.<sup>733</sup> The Rich legal team, distinguished those cases on the thinnest of technical grounds, since those convictions were for “miscertification” of oil, not a violation of the permissible markup regulations. However, it is most likely that the memo had no impact on the White House’s consideration of the Rich pardon, either pro or con, since the White House staff took little time to read the Rich pardon petition, much less extraneous information pertaining to the case.

Attorney Peter Kadzik called the White House on each of the last three days of the Clinton Administration, seeking information about the status of the Rich pardon. On January 18, January 19, and January 20, Kadzik called staff in John Podesta’s office to see if the President had made any decisions on pardons. After the calls on the 19<sup>th</sup> and 20<sup>th</sup>, he relayed what he had learned to his partner Michael Green, who was also working on the Rich pardon.<sup>734</sup> Kadzik characterized these calls as ministerial in nature — simply trying to determine whether any pardons had been granted, and if so, whether a list of pardons was available — as opposed to his earlier direct contacts with his client John Podesta.<sup>735</sup> Nevertheless, Kadzik billed Marc Rich an

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<sup>730</sup> Andrew Goldstein, *Countdown to a Pardon*, TIME, Feb. 26, 2001, at 27.

<sup>731</sup> Jack Quinn Document Production (Memorandum from Mark Ehlers to Scooter Libby (June 10, 1988) (Exhibit 63).

<sup>732</sup> *Id.*

<sup>733</sup> *Id.*

<sup>734</sup> Dickstein Shapiro Morin & Oshinsky Document Production DSM0065 (Billing records of Dickstein Shapiro Morin & Oshinsky to Robert Fink (Dec. 12, 2000, and Feb. 13, 2001)) (Exhibit 143).

<sup>735</sup> See “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 466 (Mar. 1, 2001) (testimony of Peter Kadzik, Partner, Dickstein Shapiro Morin & Oshinsky).

hour for his work on January 18, half an hour for his work on January 19, and half an hour for his work on January 20.<sup>736</sup>

**a. Jack Quinn's January 18, 2001, Letter to the President**

Also on January 18, 2001, Jack Quinn submitted a letter to the President “to clarify several points with regard to the petition” and to “propose a solution to any concerns . . . regarding the setting of an unwise precedent involving individuals living outside the jurisdiction of our American country.”<sup>737</sup> In this letter, Quinn again attempted to refute the argument that Rich was a fugitive. To support his position, Quinn made three arguments, all of them spurious. First, Quinn claimed that “much of Mr. Rich and Mr. Green’s professional lives have been spent abroad. . . . Thus, while they did not return to the United States following the issuance of the indictment, there is no question that this did not constitute a significant change in their international living circumstances.”<sup>738</sup> Second, Quinn claimed that Rich and Green “violated no laws in not returning to the United States, and no violation of law with regard to their purported ‘fugitivity’ ever has been alleged.”<sup>739</sup> Third, Quinn pointed out that Rich and Green “have lived not as fugitives, but their residences and places of business always have been available to and known to the United States.”<sup>740</sup>

Quinn’s first point, that Rich and Green spent a great deal of time outside of the country prior to their indictment, was completely irrelevant. It is undisputed that Rich and Green refused to return after their indictment. Legally and practically, the fact that Rich and Green had houses in Switzerland prior to that indictment was meaningless. They fled to those homes in anticipation of the indictment and to avoid its consequences. That they managed to escape before rather than after the indictment is irrelevant.<sup>741</sup> Quinn’s second assertion, that Rich and Green had not violated the law by remaining outside of the United States, was completely wrong. 18 U.S.C. § 1073, which outlaws fugitivity, states that:

Whoever moves or travels in interstate or foreign commerce with intent . . . to avoid prosecution . . . under the laws of the place from which he flees, for a crime, or an attempt to commit a crime . . . which is a felony under the laws of the place

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<sup>736</sup> Dickstein Shapiro Morin & Oshinsky Document Production DSM0065 (Billing records of Dickstein Shapiro Morin & Oshinsky to Robert Fink (Dec. 12, 2000, and Feb. 13, 2001)) (Exhibit 143). The billing entry on January 18 consists of two items, the call to the White House and a redacted entry. The entries on January 19 and January 20 each consist of two items, calls to the White House and Michael Green. Based on his descriptions of the calls to the White House, those calls should not have taken more than 6 minutes each, the minimum amount of time that could be billed at Dickstein Shapiro. While it is possible that Kadzik spent 54 minutes on other Marc Rich business on January 18, and 24 minutes speaking to Michael Green on January 19 and 20, the length of the periods of time billed during these days casts doubt either on Kadzik’s description of the calls to the White House or the accuracy of his billing.

<sup>737</sup> Jack Quinn Document Production (Letter from Jack Quinn to President William J. Clinton (Jan. 18, 2001)) (Exhibit 171).

<sup>738</sup> *Id.*

<sup>739</sup> *Id.*

<sup>740</sup> *Id.*

<sup>741</sup> *U.S. v. Lupino*, 171 F. Supp 648 (D.C. Minn. 1958).

from which the fugitive flees . . . shall be fined under this title or imprisoned not more than five years, or both.<sup>742</sup>

This statute clearly proscribes the behavior of Marc Rich and Pincus Green, namely, traveling in foreign commerce to avoid prosecution for a felony. The fact that Rich and Green were never charged with violation of this statute has more to do with the fact that they were already facing numerous felony charges than any innocence on their part.<sup>743</sup> Quinn's final point, rather than dispelling the argument that Rich and Green were fugitives, only shows the contempt with which they treated American laws. The fact that Rich and Green both lived in palatial estates in Switzerland, at addresses known to American authorities, did not mean that they were not fugitives. Swiss authorities refused to extradite Rich and Green, and they were therefore able to live their lives in comfort, rather than in hiding.

In addition to the facile and irrelevant arguments regarding his clients' status as fugitives, Quinn also made an offer to President Clinton in the January 18 letter. Quinn stated that "[m]y clients have authorized me to make it clear that they have always sought to negotiate a civil resolution with the government, and would willingly accept a disposition that would subject them to civil proceedings with the Department of Energy (or other appropriate agencies)."<sup>744</sup> While this offer might have appeared dramatic to President Clinton, someone with any understanding of the Rich case would have recognized that Rich and Green were not offering anything that they had not offered on any number of previous occasions. Throughout the Rich investigation, Rich's lawyers had offered to pay many millions of dollars to settle the case, as long as Rich was not required to serve jail time. This offer was repeatedly rejected by prosecutors, who recognized that Rich's crimes were of such a scale that jail time was amply justified. In addition, someone with knowledge of the Rich case would have recognized another serious flaw with Quinn's January 18 offer. All civil liability for Rich and Green was extinguished with the guilty pleas of the Rich companies, and that the only penalties available against Rich in 2001 were criminal.<sup>745</sup> Thus, Rich's offer — to be subject to civil penalties that could not be applied against him — was an empty offer. However, this letter, and the empty offer in it, had an impact at the White House, as would be demonstrated the following day. It does not appear that Quinn had any misgivings about what was really at issue — Rich wanted to buy his way out of his legal predicament, and if this was not an option, he would not only eschew the United States, but also work against vital U.S. interests. It is an interesting commentary on Quinn that he appears to agree with the thesis that rich people should be able to pay money to avoid prison.

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<sup>742</sup> 18 U.S.C. § 1073.

<sup>743</sup> See "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 123 (Feb. 8, 2001) (testimony of Morris "Sandy" Weinberg, Jr., former assistant U.S. attorney for the S.D.N.Y., Department of Justice).

<sup>744</sup> Jack Quinn Document Production (Letter from Jack Quinn to President William J. Clinton (Jan. 18, 2001)) (Exhibit 171).

<sup>745</sup> At the Committee's hearing, Mr. Auerbach stated, "The civil liabilities in this case were fully extinguished in 1984 when Marc Rich and Co. A.G. and Marc Rich and Co. International Limited paid \$150 million to the U.S. Government. The civil liabilities were corporate civil liabilities." "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 108 (Feb. 8, 2001).

## **b. Bruce Lindsey's Contacts with SEC Chairman Arthur Levitt**

In this same time period, Clinton aide Bruce Lindsey made an apparent effort to gather information to use in opposition to the Rich pardon. On the morning of January 17 or 18, Lindsey called Arthur Levitt, Chairman of the SEC.<sup>746</sup> Lindsey asked Levitt what he knew about Pinky Green.<sup>747</sup> Levitt told Lindsey that he had never heard the name.<sup>748</sup> Lindsey then told Levitt that Green was Marc Rich's business partner.<sup>749</sup> Levitt told Lindsey that he would find out what he could about the matter. Levitt consulted with his staff, who informed him that the SEC had no information about Rich and Green, because theirs had been an IRS and Commodities and Futures Trading Commission matter, not an SEC matter.<sup>750</sup> Levitt then left a message for Lindsey indicating that he was getting back to him about the Marc Rich matter. Lindsey called back that afternoon, and Levitt told Lindsey that the Rich matter was not in the SEC's jurisdiction. However, Levitt then added that he believed that pardons of Rich and Green would be a "real bad idea."<sup>751</sup> Lindsey agreed that Rich and Green were "fugitives" who had "never set foot in the country" and that this "is not what pardons are intended for."<sup>752</sup> Based on his contacts with Lindsey, Levitt assumed that Lindsey was personally opposed to the pardons of Rich and Green, and that he was looking for further justification or reinforcement for his position.<sup>753</sup> Levitt also assumed that the pardons would not be granted, given Lindsey's great influence in the White House.<sup>754</sup>

Shortly after the call between Lindsey and Levitt, the Marc Rich team found out about the call. In the afternoon of January 19, Robert Fink e-mailed Avner Azulay, Mike Green, and Kitty Behan, and informed them that:

I just spoke to Jack [Quinn]. He has not heard from the President, but agreed to call him as soon as he gets to a hard line phone (he was in the car). He said that the SEC knows of the request and for some reason opposed it. But not like they opposed Milken. He does not know how they learned of it. (He found out when the head of the SEC gave one of his partners a hard time about Marc yesterday.). We agree that is not good and that maybe the SDNY knows too, but we have no information on it. No other pardons have been announced yet, as far as we know.  
Bob<sup>755</sup>

The Fink e-mail again confirms that the Rich team was counting on secrecy to achieve its objective. Fink's message shows the concern with which the Rich team reacted any time that any government agency outside of the White House received word of the effort to obtain the

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<sup>746</sup> Telephone Interview with Arthur Levitt (Feb. 20, 2001).

<sup>747</sup> *Id.*

<sup>748</sup> *Id.*

<sup>749</sup> *Id.*

<sup>750</sup> *Id.*

<sup>751</sup> *Id.*

<sup>752</sup> *Id.*

<sup>753</sup> *Id.*

<sup>754</sup> *Id.*

<sup>755</sup> Piper Marbury Rudnick & Wolfe Document Production 00180 (E-mail from Robert Fink to Avner Azulay, Director, Rich Foundation *et al.* (Jan. 19, 2001)) (Exhibit 145).

pardon. When questioned about this matter at the Committee's March 1, 2001, hearing, Fink stated that he was concerned not that certain government agencies would learn of the pardon effort, but that he was concerned that the press would learn of it, and that the press' reaction "would not be helpful for a thoughtful review of the pardon application."<sup>756</sup> However, Fink's assertion is not plausible. Fink's contemporaneous e-mail specifically identifies the prosecutors in the Southern District of New York, not the public or the press, as a subject of concern. Fink's e-mail, along with other evidence, shows that Rich's lawyers were trying to keep the pardon effort from the prosecutors in New York, the people who knew the most about the Rich case and could do the most to thwart the pardon effort.

Lindsey's interaction with Arthur Levitt on the Rich and Green pardons represents the only time that White House staff reached out to anyone other than Rich's lawyers and Eric Holder to gather information about the Rich case. It was a half-hearted effort, as the SEC was not involved in the Rich case, and had no information to offer. Lindsey's effort at outreach therefore demonstrated two important facts. First, it shows that Lindsey had little understanding of the Rich case, as he did not even know where to turn to get information about Rich. If Lindsey had turned to the Southern District of New York, rather than the SEC, he would have obtained voluminous information that refuted Quinn's arguments. Second, the Lindsey effort shows that there was a genuine rift between President Clinton and his closest advisor on this issue — to the extent that Lindsey even felt the need to gather outside information to bolster his case.

## **G. January 19-20, 2001**

The final full day of the Clinton Presidency was obviously a busy one. Early in the day, President Clinton reached an agreement with the Office of Independent Counsel whereby the President admitted that "I acknowledge having knowingly violated Judge Wright's discovery orders in my deposition in [the Jones] case. I tried to walk a line between acting lawfully and testifying falsely but I now recognize that I did not fully accomplish this goal and that certain of my responses to questions about Ms. Lewinsky were false."<sup>757</sup> After making these admissions, which the President reportedly considered difficult to make, the President began final consideration of a number of grants of clemency.<sup>758</sup>

### **1. The Call Between Prime Minister Barak and President Clinton**

Also on the final day of his presidency, President Clinton made a number of farewell telephone calls to world leaders. Among these was a call to Israeli Prime Minister Ehud Barak.

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<sup>756</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 509 (Mar. 1, 2001) (testimony of Robert Fink).

<sup>757</sup> Neil A. Lewis, *Transition in Washington: The President; Exiting Job, Clinton Accepts Immunity Deal*, N.Y. TIMES, Jan. 20, 2001, at A1.

<sup>758</sup> Many, including Representative Waxman, have speculated that President Clinton was especially sensitive to "overzealous prosecutors" after making these admissions regarding his testimony in the Jones case. "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 341 (Mar. 1, 2001) (statement of the Honorable Henry Waxman). It is very possible that the President was motivated to issue a number of controversial grants of clemency in Independent Counsel cases as a result of his feelings about the Whitewater-Lewinsky investigation.

Between 2:47 and 3:09 p.m., Clinton and Barak spoke.<sup>759</sup> During that conversation, it appears that President Clinton brought up that Marc Rich matter:

President Clinton: [Redacted] I'm trying to do something on clemency for Rich, but it is very difficult.

Prime Minister Barak: Might it move forward?

President Clinton: I'm working on that but I'm not sure. I'm glad you asked me about that. When I finish these calls, I will go back into the meeting on that but I'm glad you raised it. Here's the only problem with Rich; there's almost no precedent in American history. There's nothing illegal about it but there's no precedent. He was overseas when he was indicted and never came home. The question is not whether he should get it or not but whether he should get it without coming back here. That's the dilemma I'm working through. I'm working on it.

Prime Minister Barak: Okay.<sup>760</sup>

There are two important aspects of this call. First, the transcript does not make it appear that Prime Minister Barak was tenaciously lobbying for the Rich pardon. The only comments he made at this critical juncture were "Might it move forward?" and "Okay." Neither can be seen as a forceful request. In fact, the transcript raises the possibility that Prime Minister Barak, not President Clinton, brought up the Marc Rich pardon during the telephone call. Second, not in this call, or in any other call, did Prime Minister Barak claim that the Rich pardon would have any foreign policy benefits.

These facts undermine the suggestions made by the President and his supporters which place great importance on the January 19 call by Prime Minister Barak. For example, in the Committee's March 1, 2001, hearing, John Podesta stated that "[w]hile the bulk of that [January 19] call concerned the situation in the Middle East, Prime Minister Barak raised the Rich matter at the end and asked the President once again to consider the Rich pardon."<sup>761</sup> Bruce Lindsey testified that "[i]n our meeting when he [the President] said Barak had raised it in his conversation that day he indicated that was, I think, the third time it had been raised by Mr. Barak."<sup>762</sup> If the notes of the call prepared by the White House are correct, it appears that the President, not Prime Minister Barak, raised the question of the Marc Rich pardon during the January 19 telephone call. James Carville, a longtime defender of President Clinton, appeared on Meet the Press and stated that "Prime Minister Barak made enormous concessions to try to get a peace agreement. It was very important to him. And on the last day, he called and said

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<sup>759</sup> Verbatim notes of transcript of telephone conversation between President William J. Clinton and Ehud Barak, Prime Minister, Israel (Jan. 19, 2001)) (Exhibit 148).

<sup>760</sup> *Id.*

<sup>761</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 317 (Mar. 1, 2001) (testimony of John Podesta, former Chief of Staff to the President, the White House).

<sup>762</sup> *Id.* at 431 (testimony of Bruce Lindsey, former Deputy Counsel to the President, the White House).

‘look, I really would like for you to do this,’ and the President did it.” Again, Carville’s description of the January 19 call was completely inaccurate and was either purposefully misleading or the result of false information provided to him by President Clinton or the President’s staff.

Most importantly, both on January 19, and during the controversy about the Rich pardon that followed, President Clinton repeatedly suggested that the calls from Prime Minister Barak “profoundly” influenced his decision making.<sup>763</sup> This claim was echoed by John Podesta at the Committee’s March 1 hearing:

I do know that Mr. Barak — as Mr. Lindsey said and raised a couple of times — that was, as you properly point out, was an emotional time. The peace process obviously wasn’t coming to fruition. He had enormous respect for Mr. Barak. I think Mr. Barak had asked him for several things, if you will, that were intended to show support for the State of Israel, not so much for Mr. Barak but for the State of Israel, including, for example, the pardon of Jonathan Pollard.<sup>764</sup>

There is nothing in any of the discussions between Clinton and Barak, especially the January 19 discussion, that supports President Clinton’s conclusion that the Rich pardon was especially important to Prime Minister Barak so that Barak’s calls should have had a “profound” influence on the President. The actual transcripts of the calls suggest that, at least on January 19, the Rich pardon seemed to have a more prominent place in President Clinton’s mind than in Prime Minister Barak’s mind.

## **2. Eric Holder Weighs In**

At about 6:30 in the evening on January 19, 2001, Jack Quinn called the office of Eric Holder. Quinn said that the Rich pardon was receiving serious consideration at the White House and that the White House would be calling Holder for his opinion before any decision was made.<sup>765</sup> Holder told Quinn that while he “had no strong opposition based on [Quinn’s] recitation of the facts, law enforcement in New York would strongly oppose it.”<sup>766</sup> Quinn’s notes of the conversation with Holder indicate that Holder told Quinn that he had “no personal prob[lem]” with the Rich pardon, and that his personal feeling was that he was “not strongly against” it, but that the prosecutors in the Southern District would “howl.”<sup>767</sup> It also appears that Quinn informed Holder that Prime Minister Barak had expressed support for the Rich pardon.<sup>768</sup>

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<sup>763</sup> *Rivera Live* (CNBC television broadcast, Feb. 15, 2001).

<sup>764</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 376 (Mar. 1, 2001) (testimony of John Podesta, former Chief of Staff to the President, the White House).

<sup>765</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 45 (Feb. 8, 2001) (statement of Jack Quinn).

<sup>766</sup> *Id.* at 194 (testimony of Eric Holder, former Deputy Attorney General, Department of Justice).

<sup>767</sup> Jack Quinn Document Production (Note of Jack Quinn) (Exhibit 172).

<sup>768</sup> In his hearing testimony, Holder stated that he did not recall whether he learned of Barak’s support through Quinn or Nolan. However, Beth Nolan made it clear that Holder stated that he had heard that Barak was interested in the pardon, and explained that this new information moved his position from “neutral” to “neutral leaning toward or neutral leaning favorable.” See “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 354 (Mar. 1, 2001) (testimony of Beth Nolan, former Counsel to the



Holder was told that Barak “had weighed in strongly on behalf of the pardon request,” and this assertion “really struck” Holder.<sup>769</sup> It appears that Quinn learned of Barak’s call to President Clinton from sources in Israel, likely Avner Azulay, rather than the White House.<sup>770</sup>

Earlier that afternoon, Cheryl Mills arrived in Washington from New York to visit the Clinton White House one last time. Mills spent some of the afternoon in the West Wing office of White House Counsel Beth Nolan. While Mills was in Nolan’s office, Jack Quinn called for Nolan. Nolan told Mills that she was busy and couldn’t take the call, and asked Mills to take it instead. Mills picked up the line, and spoke with Quinn. Quinn told Mills that he had recently spoken with Eric Holder, and that Holder informed him that his position on the Rich pardon was “neutral, leaning favorable.” Mills passed this information on to Nolan. Nolan understood Mills to say that Quinn had told her that Holder “favored the pardon.”<sup>771</sup> Mills was surprised that Holder had taken such a positive position on the Rich pardon, as she believed him generally to be “conservative” with respect to pardons, and believed that under Holder the Justice Department “had not fulfilled its pardon function.”<sup>772</sup>

After Mills told Nolan that Quinn said that Holder “favored the pardon,” Nolan decided to call Holder herself to see if this was true. She called Holder at about 6:40 p.m.,<sup>773</sup> and described her conversation with Holder as follows:

I had talked with him the first week in January about it, and I did not have the impression that he was in favor of it, so that’s what I said. I said, I’m hearing you’re in favor of it. I didn’t think you were in favor of it.

He said that he was neutral, which I think is the language he had used earlier in January about it. He — and I said, well, I’m a little confused because I’m hearing that you’re not just neutral. And he said that he, if — he had heard that Mr. Barak was interested, that if that were the case, while he couldn’t judge the foreign policy arguments, he would find that very persuasive and that — and I finally said, well, are you? I still don’t understand what neutral means here. And he described it as neutral leaning toward or neutral leaning favorable.<sup>774</sup>

The position that Holder took in support of the Rich pardon took many by surprise. Obviously, Beth Nolan was surprised at Holder’s position, especially when he had been neutral with respect to the pardon just two weeks earlier. Cheryl Mills was surprised, given what she

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President, the White House). Given Nolan’s seemingly clear recollection that Holder already knew about Barak’s support when she spoke to him on January 19, it is fair to conclude that it was Quinn, rather than Nolan, who told Holder about the Barak call.

<sup>769</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 194 (Feb. 8, 2001) (statement of Eric Holder, former Deputy Attorney General, Department of Justice).

<sup>770</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 348 (Mar. 1, 2001) (testimony of Jack Quinn).

<sup>771</sup> *Id.* at 354 (testimony of Beth Nolan, former Counsel to the President, the White House).

<sup>772</sup> Interview with Cheryl Mills, former Associate White House Counsel, in New York, NY (Mar. 19, 2001).

<sup>773</sup> Department of Justice Document Production DOJ/ODAG-MR-00040 (Telephone log of Deputy Attorney General Eric Holder, Jan. 22, 2001) (Exhibit 173).

<sup>774</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 354 (Mar. 1, 2001) (testimony of Beth Nolan, former Counsel to the President, the White House).

considered Holder's "conservative" perspective on pardons. Other White House staff were surprised as well. After her call with Holder, Beth Nolan informed Associate White House Counsel Eric Angel that Holder was in favor of the Rich pardon. Angel, like the rest of the staff, opposed the pardon and exclaimed, "Why the f\*\*k would he say that?"<sup>775</sup> Nolan responded by shrugging her shoulders.<sup>776</sup>

Eric Holder's support for the Rich pardon would have a significant impact in the President's deliberations later that evening. Coming from the nation's second-ranking law enforcement official, Holder's support could easily counterbalance the objections to the Rich pardon made by White House staff. Holder's support also had the illusory effect of giving the Justice Department's blessing to the Rich pardon, when in reality, not a single individual at the Justice Department other than Eric Holder knew that the Rich pardon was even being considered. No information about the Rich pardon had been shared with the Justice Department through official channels. Indeed, Holder had a central responsibility for ensuring that no one else at the Justice Department knew that the pardon was even under consideration. Moreover, despite the fact that he had been on notice that Rich was seeking a pardon since November 2000, and that the White House was actively considering it in early January 2001, Holder made no attempt to contact prosecutors in the Southern District of New York to get their opinion regarding the case.

One of the most serious questions before the Committee is why Holder decided to support the Rich pardon, given the paucity of information that Holder had about the matter. Holder had never seen any documents regarding the Rich pardon, and his sum total of knowledge about the Rich case came from a page of talking points provided to him by Jack Quinn in 2000, before the pardon effort had even begun. Holder offered a number of excuses for his decisionmaking, many of them conflicting, none of them convincing. First, Holder claimed that he was really neutral, not in favor of, the Rich pardon:

Neutral meaning I don't have a basis to form an opinion consistent with what I told him before. . . . I was neutral because I didn't have a basis to make a determination. I have not seen anything on the pardon.

I'm now saying that I'm neutral consistent with what I said before, leaning toward it if there were a foreign policy benefit. I could not make the determination if there were foreign policy benefit[s].<sup>777</sup>

Holder's claims of "neutrality" are completely implausible. First, everyone who had contact with Holder on this matter took Holder's words as being in support of the Rich pardon. Second, Holder had to have known that when he was asked for his opinion regarding a prosecution which had been brought by his agency, if he said that he was "neutral, leaning towards favorable," it was tantamount to supporting the pardon. Representative Barr pointed this fact out to Holder in the Committee's February 8 hearing:

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<sup>775</sup> Interview with Eric Angel, former Associate Counsel to the President, the White House (Mar. 28, 2001).

<sup>776</sup> *Id.*

<sup>777</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 201 (Feb. 8, 2001) (testimony of Eric Holder, former Deputy Attorney General, Department of Justice).

Rep. Barr: [I]n one conversation, you were swayed from let's give you the benefit of the doubt that you didn't know anything about the case and it was unremarkable to you, to understanding that it was important enough for a foreign leader to become personally involved in, and just based on that information alone . . . not having heard anything back from your prosecutors who identified this case as one of the most significant in white collar crime history, you all of a sudden become leaning toward favorably simply because some foreign leader, for whatever reason, [says] that he wants us to act favorably on this pardon?

Holder: What I said was that I was neutral leaning toward. Neutral, meaning consistent with what I said before, which was I don't have a basis to one way or the other —

Rep. Barr: Is that your presumption as the second top official at Justice, that if somebody comes in and asks you about a pardon that you don't know anything about, that your position is immediately neutral and therefore their job is to move you toward favorable? I mean, wouldn't your position as a prosecutor be you stand by your prosecutors and your initial position when you don't know about a case is to oppose it?

Holder: No. Without a basis to know whether — how the decision should go, I think it would be incumbent upon —

Rep. Barr: Don't you presume that your prosecutors have prepared good cases, and therefore you would operate from the presumption as their superior at the Department of Justice that you were going to stand by them and not take a neutral position?<sup>778</sup>

What Holder could not see, or would not admit to, even after it was made clear by Representative Barr, was that when he refused to support the work of the prosecutors in his own office, it amounted to one of the largest expressions of support for the Rich pardon that any independent party could muster.

Holder also attempted to argue that he was presumptively neutral on the Rich case because Rich was a fugitive, and Holder had supported a pardon for another fugitive several years earlier.

I did not reflexively oppose it [the Rich pardon] because I had previously supported a successful pardon request for a fugitive, Preston King, who, in the

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<sup>778</sup> *Id.* at 209–10 (statement of the Honorable Bob Barr and testimony of Eric Holder, former Deputy Attorney General, Department of Justice).

context of a selective service case, had been discriminated against in the 1950's because of the color of his skin.<sup>779</sup>

Holder's argument amounts to a claim that since he once supported a pardon for a fugitive, he had to support all future pardon requests by fugitives. Holder's bizarre argument actually treats fugitivity as a bonus in the consideration of a pardon, rather than a criminal act.

Mere incompetence cannot account for Eric Holder's decisionmaking in the Marc Rich case. Holder knew about Jack Quinn's efforts to obtain a pardon for Rich as early as November 2000, yet he never mentioned the effort to prosecutors in New York or the Pardon Attorney. Holder kept this information from them, even though he knew that they would vehemently oppose any effort to pardon Rich. Perhaps more important, he never made an effort to educate himself about the facts of the case. These efforts to keep prosecutors from finding out what was happening, in conjunction with Holder's complete inability to explain or defend his decisionmaking, make the concerns regarding Eric Holder's motivations even more serious.

During the Committee's February 8 hearing, at least one potential motivation for Holder was revealed. Holder asked Jack Quinn for his support to have Holder nominated as Attorney General in a future Gore Administration.<sup>780</sup> Quinn recalled such a discussion, but claimed that it was in the fall, prior to the election, and prior to the filing of the Rich pardon petition.<sup>781</sup> However, Holder allowed that there might have been more than one discussion with Quinn regarding his appointment as Attorney General.<sup>782</sup> When asked about this matter, Holder angrily denied that his efforts to be appointed as Attorney General, and his solicitation of Quinn's support, had any effect on his decisionmaking:

My actions in this matter were in no way affected by my desire to become Attorney General of the United States, any desires I had to influence or seek to curry favor with anybody. I did what I did in this case based only on the facts that were before me, the law as I understood it and consistent with my duties as Deputy Attorney General, nothing more than that.<sup>783</sup>

Holder's impassioned defense would be more believable if Holder's decisionmaking could be justified based on the facts that were in front of him. However, given his complete inability to justify his decision to keep the Rich matter from the rest of the Justice Department and his position in favor of the Rich pardon when he knew next to nothing about the case, the Committee must question Holder's motivations.

### **3. The January 19 Meeting Between White House Staff and President Clinton**

After hearing from Deputy Attorney General Holder, Beth Nolan, Bruce Lindsey, John Podesta, Meredith Cabe, Eric Angel, and Cheryl Mills all went to an Oval Office meeting with

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<sup>779</sup> *Id.* at 194 (testimony of Eric Holder, former Deputy Attorney General, Department of Justice).

<sup>780</sup> *Id.* at 202.

<sup>781</sup> *Id.* (testimony of Jack Quinn).

<sup>782</sup> *Id.* (testimony of Eric Holder, former Deputy Attorney General, Department of Justice).

<sup>783</sup> *Id.* at 203.

President Clinton to discuss the President's last grants of clemency.<sup>784</sup> This meeting took place at approximately 7:00 p.m. The presence of Cheryl Mills, who at this time was not a government employee, and had not been for over a year, has raised two serious concerns. First, Mills might have been exposed to information, that as a private citizen, she was not legally entitled to review. Certainly, if minimal due diligence regarding the Rich pardon had been performed, Mills would have been exposed to a considerable amount of highly classified information. Furthermore, even NCIC information on Rich and Green would have been inappropriate to disseminate to a private citizen like Mills. Second, at the time, Mills was a trustee of the Clinton Library. As a trustee, Mills was responsible for supervising the effort to construct the Library. However, Mills claimed that she was unaware both of general fundraising efforts, and of Denise Rich's large contributions to the Library. The White House staff present at the meeting explained that Mills was invited to the meeting because of her substantial knowledge regarding the various independent counsel investigations of the Clinton Administration.<sup>785</sup> The bulk of this meeting concerned pardons relating to various investigations by independent counsels, and Mills was asked for her opinion on whether various individuals involved in these investigations should receive pardons.<sup>786</sup>

After a lengthy discussion regarding the Independent Counsel-related pardons, the President raised the issue of Marc Rich. President Clinton said that he had received a message from Jack Quinn,<sup>787</sup> and that he had also received a call from Prime Minister Barak. Bruce Lindsey clearly recalled that the President stated that "Prime Minister Barak had spoken to him that afternoon and had asked him again — I don't believe it was the first time that the Prime Minister had raised the Marc Rich pardon — had asked him again to consider it."<sup>788</sup>

Before the President raised the Marc Rich matter, everyone on the White House staff thought it was a dead letter, and had not prepared for the issue to be brought up at the January 19 meeting.<sup>789</sup> Nevertheless, once the President raised the matter, Nolan, Lindsey, Cabe, and Angel all expressed their opposition to the Rich pardon.<sup>790</sup> Those present recall Lindsey giving a strong statement of opposition, focusing on the fact that Rich and Pincus Green were fugitives from

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<sup>784</sup> *Id.* at 428 (Mar. 1, 2001) (testimony of Beth Nolan, former Counsel to the President, the White House); Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001).

<sup>785</sup> During her tenure as Associate White House Counsel and then Deputy White House Counsel, Mills was one of the primary lawyers handling scandal-related matters at the Clinton White House.

<sup>786</sup> Interview with Cheryl Mills, former Associate Counsel to the President, the White House (Mar. 19, 2001); *See also* "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 328 (Mar. 1, 2001) (testimony of John Podesta, former Chief of Staff to the President, the White House).

<sup>787</sup> Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001).

Quinn's phone records indicate that he called the President at 12:29 p.m. on January 19 for a duration of two minutes. Jack Quinn Document Production (Telephone bill of Jack Quinn, Feb. 9, 2001) (Exhibit 174). It appears that Quinn did not actually speak to the President, but rather left a message, which was returned in the evening.

<sup>788</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 347 (Mar. 1, 2001) (testimony of Bruce Lindsey, former Deputy Counsel to the President, the White House). *See also id.* at 328.

<sup>789</sup> *Id.* at 344–45 (testimony of John Podesta, former Chief of Staff to the President, the White House).

<sup>790</sup> *Id.* at 110. *See also* Interview with Eric Angel, former Associate Counsel to the President, the White House (Mar. 28, 2001). John Podesta was present for the portion of the meeting where the independent counsel pardons were discussed, but left the meeting prior to the discussion of Marc Rich to tape a television appearance.

justice who had never faced the charges against them.<sup>791</sup> The basic thrust of all of the arguments offered by the staff focused on the fact that Rich and Green were fugitives. When asked about the strength of the arguments made by Rich and Green, Meredith Cabe stated that if their arguments were strong, Rich and Green could obviously finance an excellent defense, and they should make those arguments in court.<sup>792</sup> During this discussion, Beth Nolan also expressed her opposition to the pardon. However, she also informed the President that Eric Holder was “leaning toward” the granting of the pardon. A number of individuals involved in the decisionmaking process have identified Holder’s position as being a significant factor in the President’s decisionmaking.<sup>793</sup>

As the White House staff argued against the Rich pardon, Cheryl Mills questioned their knowledge of the case. Mills pointed out that the White House Counsel’s Office staff was not responding to the substantive issues raised in the Marc Rich petition. Mills specifically pointed out that Bruce Lindsey was not the best person to give an opinion on the Rich case since he had not even read the petition.<sup>794</sup> It appears that no one among the six individuals discussing the Rich pardon had even read through the 31-page petition. At this point, Mills outlined what she did know about the case, based on her review of materials provided to her by Jack Quinn. The President then asked her what she thought about the arguments made by Quinn about Rich’s fugitive status in his January 18 letter. Mills stated that she did not find Quinn’s arguments persuasive.<sup>795</sup> She did say that the President should look at the selective prosecution argument which had been raised by Rich. According to Beth Nolan, Mills said that the White House should be looking at the selective prosecution argument “seriously.”<sup>796</sup> But then Mills told them “you know me, I don’t care about rich white guys,” and then argued that American blacks were selectively prosecuted every day.<sup>797</sup> Of the individuals present at the meeting, only Mills made any statements that can be construed as anything other than negative about the Rich petition. The President indicated he was interested in the matter, but did not make any clear statements that he was going to issue the Rich pardon.

After this discussion, the President indicated that he had to return Quinn’s call. He did not indicate whether he had made up his mind on the Rich pardon. It was clear, though, that the President still had a strong interest in the matter.

#### **4. The President’s Call to Jack Quinn**

The President then tracked down Jack Quinn, who was having dinner at the home of a friend. Clinton spoke to Quinn about the Rich case. According to Quinn, this conversation lasted approximately twenty minutes. Before the call, Robert Fink e-mailed Quinn the following

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<sup>791</sup> Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001).

<sup>792</sup> *Id.*

<sup>793</sup> See “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 367 (Mar. 1, 2001) (testimony of John Podesta, former Chief of Staff to the President, the White House).

<sup>794</sup> Interview with Cheryl Mills, former Associate Counsel to the President, the White House (Mar. 19, 2001).

<sup>795</sup> Interview with Eric Angel, former Associate Counsel to the President, the White House (Mar. 28, 2001).

<sup>796</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 346 (Mar. 1, 2001) (testimony of Beth Nolan, former Counsel to the President, the White House).

<sup>797</sup> Interview with Eric Angel, former Associate Counsel to the President, the White House (Mar. 28, 2001).

suggestion: “I would say, Do it for me. I know it is deserved.”<sup>798</sup> Also providing a suggestion as to the topics discussed between Quinn and President Clinton is a list of bullet points apparently prepared by Quinn for the call:

- unusual
- but not unworthy
- never was a case
- tax RICO fraud
- stayed away — publicity
- CTS/RUDY SAY OVERREACHED
- will submit to some civil processes in ARCO
- others similarly sit.
- controversial/defensible
- humanitarian record since that time
- Ken Starr
- Ira[n]-Contra
- inequity
- bias — rich Jew
- Israel<sup>799</sup>

As has been discussed throughout this report, most of Quinn’s apparent arguments were completely false, ranging from the assertion that there “never was a case,” to the claim that other similarly situated defendants were subject to civil penalties, to the preposterous claim that Rich was targeted because he was Jewish.

According to Quinn, “President Clinton had obviously read and studied the pardon petition. He grasped the essence of my argument about this case being one that should have been handled civilly, not criminally, and he discussed with me whether the passage of time would permit statute of limitations defenses in such a civil proceeding.”<sup>800</sup> After President Clinton expressed this opinion, Quinn told the President that he “would happily give him a letter waiving those defenses, and he insisted that I provided one to him within an hour.”<sup>801</sup> Quinn has testified that his discussion with the President was limited to the law and the facts of the Rich case, and at no time touched upon the financial contributions of Denise Rich. After getting off the phone with the President, Quinn drafted a short letter making the necessary waiver. The letter reads as follows:

I am writing to confirm that my clients, Marc Rich and Pincus Green, waive any and all defenses which could be raised to the lawful imposition of civil fines or penalties in connection with the actions and transactions alleged in the indictment against them pending in the Southern District of New York. Specifically they will

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<sup>798</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00406 (E-mail from Robert Fink to Jack Quinn (Jan. 19, 2001)) (Exhibit 175).

<sup>799</sup> Jack Quinn Document Production (Note of Jack Quinn) (Exhibit 176).

<sup>800</sup> “President Clinton’s Eleventh Hour Pardons,” *Hearing Before the Senate Comm. on the Judiciary*, 107th Cong. 70 (Feb. 14, 2001) (testimony of Jack Quinn).

<sup>801</sup> *Id.*

not raise the statute of limitations or any other defenses which arose as a result of their absense [sic].<sup>802</sup>

This letter was then faxed to the White House, where it was apparently provided to the President and the relevant White House staff.

It was after the telephone call with Jack Quinn that President Clinton apparently decided to grant the pardons to Marc Rich and Pincus Green. The President himself has pointed to this agreement as a significant concession that he was able to obtain from Jack Quinn and Marc Rich.<sup>803</sup> That the assurances given by Jack Quinn had any impact on President Clinton's decisionmaking is deeply troubling. The promise made by Quinn was an empty promise for at least three reasons.

First, Quinn agreed to waive a defense that Marc Rich and Pincus Green could not use in any event. Due to their absence from the United States, Marc Rich and Pincus Green did not have a statute of limitations defense to waive. The statute of limitations provision of the Petroleum Overcharge Distribution and Restitution Act of 1986<sup>804</sup> would apply to any civil enforcement action imposing civil penalties on Marc Rich and Pincus Green for violations of the Emergency Petroleum Allocation Act of 1973<sup>805</sup> and the Economic Stabilization Act of 1970.<sup>806</sup> The limitations provision provides that a civil enforcement action cannot be commenced after the later of September 30, 1988, or six years after the date of the violation.<sup>807</sup> It appears that this provision would provide a defense for Marc Rich and Pincus Green; however, immediately following the limitations provision are exceptions tolling the limitations period. The first exception provides:

(1) In computing the periods established in subparagraphs (A) and (B) of subsection (a)(1) of this section, there shall be excluded any period —

(A) during which any person who is or may become the subject of a civil enforcement action is outside the United States, has absconded or concealed himself, or is not subject to legal process.<sup>808</sup>

Therefore, according to the plain meaning of the statute, the time Marc Rich and Pincus Green were outside the United States tolled the statute of limitations. Furthermore, a look at the legislative history of this provision shows that Congress intended this result. Congress enacted the limitations provision with the intent that all alleged violations of the law would be pursued expeditiously but it did not intend for those who violated the laws to escape prosecution.<sup>809</sup> It is evident from the plain meaning of the statute, as well as the legislative history, that Marc Rich

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<sup>802</sup> Jack Quinn Document Production (Letter from Jack Quinn to President William J. Clinton (Jan. 19, 2001)) (Exhibit 177).

<sup>803</sup> William Jefferson Clinton, *My Reasons for the Pardons*, N.Y. TIMES, Feb. 18, 2001 (Exhibit 178).

<sup>804</sup> 15 U.S.C.A. §§ 4501–4507 (2001).

<sup>805</sup> 15 U.S.C.A. §§ 751–760(h) (2001), omitted pursuant to 15 U.S.C.A. § 760(g).

<sup>806</sup> 12 U.S.C.A. § 1904 (1976) omitted, pursuant to Pub.L. 91-151, Title II, § 211.

<sup>807</sup> 15 U.S.C.A. § 4504(a)(1).

<sup>808</sup> 15 U.S.C.A. § 4504(b)(1)(A).

<sup>809</sup> H.R. Conf. Rep. No. 99-1012, at 234 (1986).



and Pincus Green did not have a statute of limitations defense to raise, but that, in fact, their absence tolled the limitations period.

Second, it appears almost certain that Rich does not have any civil liability relating to the charges against him in 1983. Martin Auerbach, one of the main prosecutors responsible for investigating Rich, opined that “[t]he civil liabilities in this case were fully extinguished in 1984 when Marc Rich and Co. A.G. and Marc Rich and Co. International Limited paid \$150 million to the U.S. Government. The civil liabilities were corporate civil liabilities.”<sup>810</sup> When asked about Rich’s promise to pay civil liabilities, Sandy Weinberg stated, “What civil penalties? The civil penalties already have been extracted, \$200 million worth. They were corporate liabilities and were already handled through plea agreements. This is about as big an empty promise as can be made.”<sup>811</sup> Rich’s own lawyers agree with the assessment of the prosecutors. Michael Green, one of the main lawyers representing Rich, stated that “[w]e think he [Marc Rich] owes no civil liabilities.”<sup>812</sup> Perhaps the most telling sign is that over a year after the Rich pardon, the Department of Energy has taken no action to collect civil penalties from Rich.<sup>813</sup>

Third, to the extent that civil penalties were available, Marc Rich had been willing to pay as much as \$100 million to settle the case against him, going back to the early 1980s. What Rich had feared though, and was not willing to accept, was any time in jail. Rather than representing a concession, the agreement between the President and Quinn represented exactly what Rich had been demanding all along.

It cannot be disputed that the deal the President reached with Jack Quinn on January 19, 2001, was a hollow, meaningless deal. The only remaining question is whether the President’s mistake was the result of ignorance, part of his complete failure to conduct any research about the Marc Rich case, or whether the President knew it was an empty agreement and made it solely to provide window dressing for his decision. Since this question goes to the heart of whether or not President Clinton’s decision was corrupt, it is difficult for the Committee to reach a conclusion on this question, absent additional information from individuals who have refused to cooperate with the Committee’s investigation. However, it is difficult to understand why President Clinton would enter into these kinds of negotiations with Jack Quinn, reach this kind of agreement, and then use the agreement as a justification for granting the pardon without even checking with someone who understood the case to see if the agreement had substance. President Clinton knew that his staff had not even read Quinn’s submissions to the White House, much less spoken to parties outside the White House about the Rich matter. Therefore, President Clinton, if he was attempting to reach a reasonable decision in the Rich matter, should have understood the need to turn to someone who understood the case to assist him in the matter. That he did not seek such advice, raises further questions about his decisionmaking, and about his motive for issuing the Rich and Green pardons.

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<sup>810</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 108 (Feb. 8, 2001) (statement of Martin Auerbach, former assistant U.S. attorney for the S.D.N.Y., Department of Justice).

<sup>811</sup> Jerry Seper, *Pardoned Financier Gives ‘Empty Promise,’ Ex-Prosecutor Says*, WASH. TIMES, Jan. 30, 2001, at A1.

<sup>812</sup> Raymond Bonner and Alison Leigh Cowan, *Notes Show Justice Official Knew of Pardon Application*, N.Y. TIMES, Feb. 2, 2001, at A14.

<sup>813</sup> Department of Energy staff have informed the Committee that they are still reviewing the Rich case.

## 5. The White House Informs the Justice Department of the Decision

President Clinton apparently made the decision to pardon Rich and Green in the evening of January 19, 2001. After the President made the decision, Bruce Lindsey and Beth Nolan were informed of the decision. Nolan then asked Associate White House Counsel Meredith Cabe to inform the Justice Department, and have the Justice Department perform a National Crime Information Center (“NCIC”) check on Rich and Green. It was standard procedure for the Justice Department to perform this kind of check on an individual before they received a pardon, even under the dramatically truncated background checks employed by the Clinton Administration in January 2001. The purpose of the NCIC check was to ensure that the individual receiving the pardon did not have any outstanding warrants or criminal charges.

Shortly after midnight on January 20, 2001, less than twelve hours before the end of the Clinton Administration, Cabe telephoned Roger Adams, the Pardon Attorney, and informed him that she would be faxing over a list of additional individuals to whom President Clinton was considering granting pardons.<sup>814</sup> When the list arrived, Adams saw the names of Marc Rich and Pincus Green on the list. This was the first time that Adams had heard of Rich or Green being considered for pardons. Adams saw that the faxed list did not contain any identifying information for Rich or Green, so he called Cabe to ask for additional information.<sup>815</sup> Cabe provided Adams with dates of birth and social security numbers for Rich and Green. Cabe then informed Adams that she expected that there would be little information on them, because they had been “living abroad” for several years.<sup>816</sup>

While the FBI conducted the NCIC check on Rich and Green, the White House Counsel’s Office faxed further information on Rich, consisting of several pages from Quinn’s pardon petition, to the Pardon Attorney’s Office.<sup>817</sup> Based on his review of these pages, Roger Adams understood the full magnitude of the Rich and Green case for the first time. He saw that they had been indicted 17 years earlier in New York, and had remained fugitives since then. A member of Adams’ staff then began to conduct internet research on Rich and Green.<sup>818</sup> While Adams’s staff was attempting to gather information about Rich and Green, the FBI faxed the results of the NCIC check to Adams. The NCIC check revealed that Rich and Green were fugitives wanted for mail and wire fraud, arms trading, and tax evasion.<sup>819</sup> Adams drafted a summary of the charges against Rich and Green, and faxed the summary to the White House shortly before 1:00 a.m. on January 20.<sup>820</sup> At this point, Adams was obviously concerned about the effort to pardon Rich and Green, and called his superior at the Justice Department, Deputy

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<sup>814</sup> “President Clinton’s Eleventh Hour Pardons,” *Hearing Before the Senate Comm. on the Judiciary*, 107th Cong. 22–23 (Feb. 14, 2001) (testimony of Roger Adams, Pardon Attorney, Department of Justice).

<sup>815</sup> *Id.* at 23.

<sup>816</sup> *Id.*; Interview with Roger Adams, Pardon Attorney, Department of Justice (Feb. 27, 2001).

<sup>817</sup> “President Clinton’s Eleventh Hour Pardons,” *Hearing Before the Senate Comm. on the Judiciary*, 107th Cong. 23 (Feb. 14, 2001) (testimony of Roger Adams, Pardon Attorney, Department of Justice).

<sup>818</sup> *Id.*

<sup>819</sup> *Id.*; Interview with Roger Adams, Pardon Attorney, Department of Justice (Feb. 27, 2001).

<sup>820</sup> “President Clinton’s Eleventh Hour Pardons,” *Hearing Before the Senate Comm. on the Judiciary*, 107th Cong. 23 (Feb. 14, 2001) (testimony of Roger Adams, Pardon Attorney, Department of Justice).

Attorney General Holder, at home.<sup>821</sup> Adams informed Holder that President Clinton was considering granting pardons to Rich and Green. Holder then informed Adams that he was aware of the pending clemency requests from Rich and Green.<sup>822</sup> According to Holder, when he received this call from Roger Adams, it was the first time that he actually thought that the Rich pardon was likely to be granted.<sup>823</sup>

After his brief conversation with Holder, Adams received another call from the White House Counsel's office, which had by this time had received Adams' summary of the charges against Rich and Green. During this conversation, Adams told Meredith Cabe that in addition to the charges against Rich, there was a customs alert posted for Rich and Green and that he believed this was significant. Apparently not trusting Adams' summary, Cabe asked Adams to fax over the original printout from the NCIC check that was performed by the FBI. Adams faxed the printout over, as well as the articles that his staff had been able to locate through their Internet searches.<sup>824</sup>

What had caused such concern at the White House was the reference in the NCIC check to "arms trading." No one at the White House had ever heard that Rich or Green had been involved in arms trading. Cabe and Eric Angel took the information about arms trading to Beth Nolan. Nolan and Cheryl Mills were in Nolan's office. Bruce Lindsey had apparently left the White House for the evening. Cabe gave Nolan and Mills the information, which had been provided to her by the Pardon Attorney's office. Nolan compared the information in the NCIC printout to the Rich and Green indictment, attempting to discern whether they had been charged with arms trading in 1983, or whether this was new information. Cabe, Angel, Mills, and Nolan were unable to come to any definitive answer as to whether the information about arms trading was already known, or whether this was new information which would complicate the effort to issue a pardon. At the time, they speculated that either this was a new charge for which Rich and Green were wanted, unrelated to their 1983 indictment, or this was the way that the NCIC database referred to the Trading with the Enemy count which was part of their indictment.<sup>825</sup> In short, however, they did not have an understanding of what the "arms trading" reference meant.

The meaning of the "arms trading" reference in the NCIC is not entirely clear, since none of the charges in Rich and Green's 1983 indictment related to arms trading. The NCIC printout itself, however, does not support the speculation by the White House staff that the "arms trading" reference was just another term for trading with the enemy. The printouts for Marc Rich from the NCIC database show separate entries for "trading with the enemy" and "arms trading," suggesting that they are separate offenses.<sup>826</sup> Given the fact that on its face the NCIC printout raises serious questions about Rich being wanted for arms trading, President Clinton clearly

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<sup>821</sup> *Id.*

<sup>822</sup> *Id.*

<sup>823</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 194 (Feb. 8, 2001) (statement of Eric Holder, former Deputy Attorney General, Department of Justice).

<sup>824</sup> "President Clinton's Eleventh Hour Pardons," *Hearing Before the Senate Comm. on the Judiciary*, 107th Cong. 23–24 (Feb. 14, 2001) (testimony of Roger Adams, Pardon Attorney, Department of Justice).

<sup>825</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 374–75 (Mar. 1, 2001) (testimony of Beth Nolan, former Counsel to the President, the White House).

<sup>826</sup> Department of Justice Document Production DOJ/SDNY-MR-00021–23 (NCIC Printouts for Pincus Green and Marc Rich (Mar. 3, 1992, and Mar. 18, 1994)) (Exhibit 179).

should have made a serious inquiry to determine what the arms trading entry meant before granting the Marc Rich pardon.<sup>827</sup> Instead, he did not make a single inquiry of law enforcement.

To try to figure out a response to this new piece of information, Nolan, Mills, Cabe, and Angel called Bruce Lindsey. Lindsey did not have any insight regarding the arms trading information, but reiterated his opposition to the Rich pardon, and stated that the arms trading information was yet another reason not to issue the pardon.<sup>828</sup> Nolan then called Jack Quinn. Quinn expressed irritation to be receiving a call at 2:00 a.m.<sup>829</sup> Quinn also was not immediately responsive to the concerns Nolan was raising.<sup>830</sup> Quinn told Nolan that he “would have known if [Rich] had been charged with that.” Apparently Nolan, and Cheryl Mills as well, did not consider that a satisfactory answer, and pressed Quinn for more information. Mills told Quinn that “you’ve got to work with us here.”<sup>831</sup> At that point, Quinn told Nolan and the others that he would check back on this issue and call them back.<sup>832</sup> Shortly thereafter, Quinn called back and forcefully told Nolan and the others that he had no knowledge about any arms trading charges against Rich.<sup>833</sup> He told them to look at the indictment against Rich, and that the indictment “was the only thing out there.”<sup>834</sup> Quinn’s answer was obviously non-responsive but no one appears to have taken any steps to obtain a responsive answer.

At the Committee’s March 1 hearing, Nolan was asked why she did not take any further steps to determine exactly what charges were outstanding against Marc Rich. Nolan’s answer was less than satisfactory:

Chairman Burton: An intelligence agency tells you that there was arms trading, a violation of law, and all these other things had taken place which had not just been revealed or checked; and you take the man’s word or the President takes his word on the pardon of one of the most wanted fugitives in the world who renounced his citizenship and all the other things we talked about. You took his word when Mr. Quinn was representing him. And Mr. Quinn said in previous testimony the last time he was here, my job wasn’t to tell all the facts that were against the pardon. My job was to point out all the reasons why there should be a pardon.

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<sup>827</sup> The Committee is not aware of any criminal charges that have been lodged against Rich or Green for illegal arms trading. There are numerous reports, however, that Marc Rich is involved in trafficking weapons, included sophisticated missile guidance systems. This arms dealing activity may or may not be legal. See, e.g., A. CRAIG COPETAS, METAL MEN: MARC RICH AND THE 10-BILLION-DOLLAR SCAM 131 (1985) (indicating that Rich paid for Iranian oil with small arms, automatic rifles, and hand-held rockets); Jim Hougan, *King of the World* (Marc Rich), PLAYBOY, Feb. 1, 1994, at 104 (indicating that Rich bought gas-fired gyroscopes from North Korea and sold them to Iran).

<sup>828</sup> Interview with Eric Angel, former Associate Counsel to the President, the White House (Mar. 28, 2001).

<sup>829</sup> *Id.*

<sup>830</sup> *Id.*

<sup>831</sup> *Id.*

<sup>832</sup> Interview with Cheryl Mills, former Associate White House Counsel (Mar. 19, 2001); Interview with Eric Angel, former Associate Counsel to the President, the White House (Mar. 28, 2001).

<sup>833</sup> *Id.*

<sup>834</sup> Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001).

You know as an attorney that's what you do. You try to make the best case for your client.

Why in the world would you go to Mr. Quinn when there was a question of illegal activity and say, hey, what about this? You know darn well he's going to say, oh, that's nothing. That was just a minor thing. That was probably not arms trading. It was oil trading or something else. Why would you take his word for it and why would the President take his word for it and then go ahead and grant the pardon? I just don't understand it. It eludes me. Would you explain that to me?

\* \* \*

Ms. Nolan: This was 2:30 a.m. My eyes were officially stuck together by then. I had my contact lenses in since 7 or 6 the morning before. I had been going on a couple hours of sleep most nights that week, as had the President; and I think frankly, as Mr. Podesta said, because this came up so late we did not do the kind of checks that we would have if we would have had the time. . . . As Mr. Lindsey indicated, he had indeed indicated that, understand Mr. Quinn is not your advisor, he is an advocate. But I do think that the President viewed Mr. Quinn as somebody who he truly did trust to give him correct information; and as far as we know that information was correct, not incorrect.

\* \* \*

Chairman Burton: I'm running out of time here. Was Mr. Quinn at the White House?

Ms. Nolan: No.

Chairman Burton: So you had the ability with your eyes stuck together to get ahold of Mr. Quinn, but you didn't try to contact the Justice Department to ask them about it because it was 2:30 a.m.? And you can get a hold of the man who is an advocate for pardoning one of the most wanted fugitives in the world, but you don't call the Justice Department or the intelligence agency at 2:30 a.m.? I don't understand that.<sup>835</sup>

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<sup>835</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 379 (Mar. 1, 2001).

After the final conversation with Quinn, at 2:30 a.m., Nolan called President Clinton. Nolan told the President that they had performed an NCIC check, which showed that Rich was a wanted fugitive, and also revealed new information suggesting that Rich was wanted for arms trading. Nolan then told the President that the White House did not have any information showing that the NCIC information was inaccurate, other than what Quinn had told them:

I said all we have is Jack Quinn's word that the arms trading is not, in fact, an issue for Mr. Rich.

\* \* \*

[T]hat's when I said, you know, what we have is Jack Quinn's word; that's all we have at this hour. And he said, take Mr. Quinn's word, or take Jack's word.<sup>836</sup>

With that sentence — “take Jack's word” — President Clinton decided to grant the pardons of Marc Rich and Pincus Green. Nolan informed Cheryl Mills and Meredith Cabe, both of whom were in her office, of the decision, and then went home for the evening. The actual master warrant granting pardons to Marc Rich, Pincus Green, and 138 others was prepared at the Justice Department, and then delivered to the White House on the morning of January 20. The warrants were then signed by President Clinton.

## **H. Aftermath of the Rich and Green Pardons**

### **1. Eric Holder's Congratulatory Remarks**

The first reaction of the Marc Rich legal team to the pardons was one of happiness and self-congratulation. By Monday, January 22, they had turned to more practical concerns, like having the travel restrictions and arrest warrants for Rich and Green lifted. Jack Quinn spoke with Eric Holder, who was now Acting Attorney General. Quinn asked Holder what steps needed to be taken to ensure that Rich and Green were not arrested when they traveled. Holder told Quinn he needed to have detainers removed from computers, as well as inform Interpol of the pardon.<sup>837</sup> Apparently, Holder thought that the Southern District of New York might resist the pardon, and refuse to dismiss the indictment. In that case, Holder counseled Quinn, Rich and Green to move to dismiss the indictment in court.<sup>838</sup> According to Jack Quinn, who took notes of the conversation, Holder said that Quinn “did a very good job.”<sup>839</sup> Holder also gave Quinn advice on how to handle the burgeoning media requests regarding the pardon effort, telling Quinn that he should “make public [their] commitment to waive defenses to civil penalties at

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<sup>836</sup> *Id.* at 378, 429 (testimony of Beth Nolan, former Counsel to the President, the White House).

<sup>837</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 194 (Feb. 8, 2001) (statement of Eric Holder, former Deputy Attorney General, Department of Justice).

<sup>838</sup> See Jack Quinn Document Production (E-mail from Jack Quinn to Robert Fink *et al.* (Jan. 22, 2001)) (Exhibit 180); Jack Quinn Document Production (Note of Jack Quinn) (Exhibit 181).

<sup>839</sup> *Id.*

[DOE] and the [sic] support of [B]arak.”<sup>840</sup> Also in this same conversation, Holder asked Quinn to consider hiring two of his former aides at the Justice Department.<sup>841</sup>

Holder has offered evolving accounts of his congratulatory remarks to Jack Quinn. At first, Holder’s supporters informed the press that his comments to Quinn were “sarcastic, not congratulatory.”<sup>842</sup> Then, when questioned about this matter at the Committee’s hearing, Holder denied making the comments at all.<sup>843</sup> Given the fact that Quinn took notes and sent an e-mail contemporaneously with the conversation with Holder, and that Holder has offered conflicting accounts of the conversation, it appears that Holder has not offered an honest explanation, and that he did indeed make the congratulatory comments to Quinn. Such comments support the Committee’s conclusion that Eric Holder was sympathetic to the Marc Rich pardon or was willing, through his own inaction, to see the pardon granted so as not to interfere with his other interests. It is also worth noting that Holder, who had himself sought Quinn’s support for his appointment as Attorney General if Vice President Gore won the presidency, continued to seek Quinn’s support for finding employment for his underlings, even after the Rich pardon had been granted.

## **2. The Rich Team’s Effort to Deal with the Press**

After Holder’s congratulations, things began to go downhill for the Marc Rich team. By the end of the day on Monday January 22, it became clear that the pardons of Marc Rich and Pincus Green were going to be a major news story. E-mails between Rich’s representatives showed that they were having some difficulty dealing with this unforeseen consequence of the pardons. Rich lawyer Robert Fink began by asking how he should deal with press calls:

I have been asked who lobbied the President in behalf of Marc (and Pinky) and said it may be private and therefore did not immediately respond. May I? Who should I say? I have told everyone that Denise was in favor of the resolution of this case and was in favor of the pardon.<sup>844</sup>

Rich’s representative in Israel, Avner Azulay, was concerned about the publicity:

Pse [sic] keep barak [sic] out of the media. We have enough names on the list other than his. Important to keep all politicians out of the story. Pse [sic] share with me the inclusion of any one on the list. This is election time here and has a

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<sup>840</sup> Jack Quinn Document Production (E-mail from Jack Quinn to Robert Fink *et al.* (Jan. 22, 2001)) (Exhibit 180).

<sup>841</sup> *Id.* Holder sent the resumes of the two aides, former Associate Deputy Attorney General Bernard J. De lia and former Associate Deputy Attorney General Nicholas M. Gess, later that day. Jack Quinn Document Production (Fax from Eric Holder, Deputy Attorney General, Department of Justice, to Jack Quinn (dated Dec. 1, 2000, date stamped by fax machine Jan. 22, 2001)) (Exhibit 182). In addition, at least one of these aides, Nick Gess, called Quinn as early as January 2, 2001, presumably seeking a job. The telephone message reads, “Calling at Holder’s suggestion.” See Jack Quinn Document Production (Telephone Message from Nick Gess, Associate Deputy Attorney General, Department of Justice, to Jack Quinn (Jan. 2, 2001)) (Exhibit 183).

<sup>842</sup> Lucy Howard, Susannah Meadows, Bret Begun & Katherine Stroup, *Periscope*, NEWSWEEK, Feb. 12, 2001, at 6.

<sup>843</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 215 (Feb. 8, 2001) (testimony of Eric Holder, former Deputy Attorney General, Department of Justice).

<sup>844</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00191 (E-mail from Robert Fink to Avner Azulay, Director, Rich Foundation *et al.* (Jan. 22, 2001)) (Exhibit 69).

potential of blowup. A newsweek reporter here has already asked if there were any political contributions. Other than that I thought we agreed that all inquiries, interviews should be channeled to [G]ershon. Why is B[ob] F[ink] giving interviews? He shouldn't be dealing with this aspect.<sup>845</sup>

Jack Quinn also made a case for further disclosure:

I have this very great concern: we are withholding our very good and compelling petition from the press only to protect the tax professors who don't want to be too far out front. The tail is wagging the dog. I think it is critical that one of us sit down with some journalist and share the petition. I hope I'm not over-reacting, but thins [sic] is my best judgment. I'd do it with the NY Times. In the next hour or so. Is that possible?<sup>846</sup>

Avner Azulay agreed with the need to make the tax professors' opinion public:

You are right. Why do we have to worry so much about the professors. They did a job and there is nothing wrong in giving expert onions [sic]. A lot know about it, including the doj and sdny. It is part of the petition. Why hide it?<sup>847</sup>

The e-mails indicate that Professors Ginsburg and Wolfman expressed some hesitancy to have their work for Marc Rich publicly disclosed. When asked if Professor Ginsburg was hesitant to be linked to the Rich case because it might harm the reputation of his wife, Supreme Court Justice Ruth Bader Ginsburg, Quinn said Professor Ginsburg's, and Professor Wolfman's concerns were limited to a fear of being "besieged with media requests."<sup>848</sup> It appears that the professors' concerns were more serious than fear of dealing with a barrage of press calls, and it stands to reason that they were concerned about having their reputations tarnished by having the public know of their lucrative work for Marc Rich and Pincus Green.

While they were deciding how to deal with the public, the Marc Rich team was also receiving communications from former President Clinton. On January 23, Anne McGuire, an associate at Quinn Gillespie, e-mailed Jack Quinn to let him know that she had heard from Clinton Library fundraiser Peter O'Keefe:

Just got a weird call from Peter O'Keefe — was up in Chappaqua for the last few days — he asked me to check with you on whether or not you were going to go out and start defending vigorously — said "we wanted to find out." I am assuming he meant Terry [McAuliffe] — but I did not go into it on the cell phone.<sup>849</sup>

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<sup>845</sup> *Id.*

<sup>846</sup> Piper Marbury Rudnick & Wolfe Document Production PMR&W 00195 (E-mail from Jack Quinn to Robert Fink *et al.* (Jan. 23, 2001)) (Exhibit 184).

<sup>847</sup> *Id.*

<sup>848</sup> "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 180 (Feb. 8, 2001) (testimony of Jack Quinn).

<sup>849</sup> Jack Quinn Document Production (E-mail from Anne McGuire, Associate, Quinn Gillespie & Associates, to Jack Quinn (Jan. 23, 2001)) (Exhibit 185). Shortly after her conversation with O'Keefe, McGuire spoke to Terry



It appears that Quinn spoke to former President Clinton on January 23 and 24, about how to handle the Rich issue in the press. On January 23, Quinn e-mailed Avner Azulay and pointed out that Clinton “himself is saying in his frustration about the press coverage that good people like the PM [Barak] supported this.”<sup>850</sup> The following day, Quinn e-mailed the Marc Rich team and said that he “spoke to BC. [He] thinks we shd offer op-ed to daily news. [C]an anyone help?”<sup>851</sup>

On January 26, 2001, Quinn did write an op-ed piece, which was published by *The Washington Post*. The article was little more than a rehash of the same inaccurate arguments that Quinn made to the White House when he was seeking the pardon. Quinn’s main claims were that: (1) companies which committed acts similar to those of Rich and Green were not prosecuted for their actions; (2) the prosecutors in the Southern District of New York refused to negotiate with Rich and Green; and (3) Quinn did not violate the Executive Order banning lobbying by officials who had left the White House in the previous five years. As explained earlier in this report, all of these arguments were misleading.

Internal e-mails among the team defending Jack Quinn indicate that they were particularly concerned about Quinn’s exposure for his possible role in “coordinating” political activities and the effort to obtain the Rich pardon. These e-mails also indicate that Quinn was eager to place the blame for the Rich pardon onto others. The day after the Committee’s February 8, 2001, hearing, Quinn associate Peter Mirijanian sent the following e-mail to Quinn and a number of his associates:

Where Jack remains exposed is in defending the optics of the emails, contributions and the DNC piece (Beth Dzoretz [sic]). We need to anticipate the worst in this regard — i.e. Fink refuses to testify, Denise is granted immunity and Beth is brought before the committee. Since Jack has been out front and center on this the impression will stick that, yes, he knew of these activities and gave them his tacit approval.

Just like with Holder, if these other parties don’t come forward and instead duck their responsibility on these matters, we’ll have to do it for them. (Does that sound too “Sopranos-like”?)<sup>852</sup>

On February 10, 2001, Mirijanian advised Quinn against appearing on Meet the Press because of similar concerns:

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McAuliffe and asked Quinn to “[c]all me as soon as you can.” Jack Quinn Document Production (E-mail from Anne McGuire, Associate, Quinn Gillespie & Associates, to Jack Quinn (Jan. 23, 2001)) (Exhibit 186). The timing of McAuliffe’s call suggests that it was related to Quinn’s response to the Rich matter. However, since McAuliffe has refused to participate in an interview with Committee staff, the Committee cannot know definitively what McAuliffe’s call was about.

<sup>850</sup> Jack Quinn Document Production (E-mail from Jack Quinn to Avner Azulay, Director, Rich Foundation *et al.* (Jan. 23, 2001)) (Exhibit 187).

<sup>851</sup> Jack Quinn Document Production (E-mail from Jack Quinn to Robert Fink *et al.* (Jan. 24, 2001)) (Exhibit 188).

<sup>852</sup> Jack Quinn Document Production JQ 02943 (E-mail from Peter Mirijanian, Quinn Gillespie & Associates, to Scott Hynes, Quinn Gillespie & Associates *et al.* (Feb. 9, 2001)) (Exhibit 189).

My concern jack is that russert is going to get into a series of questions involving denise's political activities and you will be the de facto defender of what she did. That will only result in more press inquiries about your "coordinating" role — something we want to avoid.<sup>853</sup>

These e-mails suggest that Quinn and his defenders felt that they were vulnerable to questions about Quinn's coordination of the political activities of Denise Rich and Beth Dozoretz and the effort to obtain Marc Rich's pardon. The e-mails raise the possibility that Denise Rich and Dozoretz might have had valuable information regarding these activities which they did not share with the Committee, due to the invocation of their Fifth Amendment rights.

### **3. President Clinton's Column in *The New York Times***

For the first month of public outcry about the Marc Rich pardon, President Clinton was largely silent. He made a few scattered comments about the matter, most notably a telephone call to Geraldo Rivera. Through the call to Rivera, the public learned that the President felt "blindsided by this. I have no infrastructure to deal with this, no press person. I just wanted to go out there and do what past presidents have done, but the Republicans had other ideas for me."<sup>854</sup> President Clinton also suggested that the outcry over Marc Rich was hypocritical, because Republicans had worked on the Rich case: "It's terrible! I mean, he had three big-time Republican lawyers, including Dick Cheney's chief of staff. Marc Rich himself is a Republican."<sup>855</sup> President Clinton also told Rivera about the influence that Israeli support for Rich had played: "Now, I'll tell you what did influence me. Israel did influence me profoundly."<sup>856</sup>

On Sunday, February 18, former President Clinton attempted a fuller defense by publishing a column in *The New York Times*. Unfortunately for the President, his attempt at defense only made matters worse. The column largely parroted the arguments made by Jack Quinn and the other Marc Rich lawyers. Therefore, it was rife with false and misleading statements. The following is a summary of the arguments made by the President, and the problems with each argument:

- "I understood that the other oil companies that had structured transactions like those on which Mr. Rich and Mr. Green were indicted were instead sued civilly by the government."<sup>857</sup>

As explained earlier in this report, there were 48 criminal prosecutions for violations of oil price control regulations by crude oil resellers, and 14 of those individuals served time in prison. In fact, John Troland and David Ratliff, resellers of oil who played a small part

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<sup>853</sup> Jack Quinn Document Production JQ 02946 (E-mail from Peter Mirijanian, Quinn Gillespie & Associates, to Jack Quinn (Feb. 10, 2001)) (Exhibit 190).

<sup>854</sup> *Rivera Live* (CNBC television broadcast, Feb. 15, 2001).

<sup>855</sup> *Id.*

<sup>856</sup> *Id.*

<sup>857</sup> William Jefferson Clinton, *My Reasons for the Pardons*, N.Y. TIMES, Feb. 18, 2001, at sec. 4, p. 13 (Exhibit 178).

in Marc Rich's plan to avoid U.S. oil regulations and tax laws, served 10 months in prison, and provided vital evidence against Marc Rich and Pincus Green.

- "I was informed that, in 1985, in a related case against a trading partner of Mr. Rich and Mr. Green, the Energy Department, which was responsible for enforcing the governing law, found that the manner in which the Rich/Green companies had accounted for these transactions was proper."<sup>858</sup>

The so-called DOE finding was completely irrelevant to the criminal charges against Rich and Green. Despite the finding about accounting methods in a related case, the Department of Energy never disputed that Rich's companies falsified reports to hide illegal profits and then failed to pay taxes on those illegal profits. Furthermore, the former President neglected to mention that he made no effort, and he was aware that his staff made no effort, to check with Justice Department or Energy Department experts regarding this matter.

- "[T]wo highly regarded tax experts, Bernard Wolfman . . . and Martin Ginsburg . . . reviewed the transactions in question and concluded that the companies 'were correct in their U.S. income tax treatment of all the items in question[.]'"<sup>859</sup>

The tax analysis that was performed by Ginsburg and Wolfman was performed only with facts provided to the professors by the Marc Rich legal team.<sup>860</sup> The professors did not gather facts independently, and therefore based their analysis on an incorrect set of assumptions. In addition, the President failed to disclose in his column that Marc Rich paid Professors Ginsburg and Wolfman over \$96,000 for their work on the Rich case.<sup>861</sup>

- "[I]n order to settle the government's case against them, the two men's companies had paid approximately \$200 million in fines, penalties and taxes, most of which might not even have been warranted under the Wolfman/Ginsburg analysis that the companies had followed the law and correctly reported their income."<sup>862</sup>

Rather than being an argument in support of the pardon, the fact of the corporate guilty plea and the massive fines shows that the case against Rich and Green was overwhelming. As prosecutor Sandy Weinberg observed, "if the case is so weak, I mean what in the world were those lawyers [for Rich's companies] thinking at that time . . . . They would have never pled guilty, they would have never paid those fines. Whatever

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<sup>858</sup> *Id.*

<sup>859</sup> *Id.*

<sup>860</sup> Jack Quinn Document Production (Letter from Bernard Wolfman, Professor, Harvard Law School, to Gerard E. Lynch, Criminal Division Chief of the Office of the U.S. Attorney for the S.D.N.Y., Department of Justice (Dec. 7, 1990)) (Exhibit 66).

<sup>861</sup> See Letter from Professor Martin D. Ginsburg, Professor, Georgetown University Law Center, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Feb. 12, 2001) (Exhibit 64); Letter from Bernard Wolfman, Professor, Harvard Law School, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Feb. 8, 2001) (Exhibit 65).

<sup>862</sup> William Jefferson Clinton, *My Reasons for the Pardons*, N.Y. TIMES, Feb. 18, 2001, at sec. 4, p. 13 (Exhibit 178).

the reason for the pardon, Mr. Chairman, and members of the committee, whatever the reason, surely the reason was not the merits of the case.”<sup>863</sup>

- “[T]he Justice Department in 1989 rejected the use of racketeering statutes in tax cases like this one[.]”<sup>864</sup>

The fact that the Justice Department stopped using the tax charges as predicate offenses for bringing RICO charges is irrelevant to the Rich pardon. While the Justice Department did stop using tax charges in this way, it continues to allow mail and wire fraud as predicate offenses, and therefore, RICO charges could still be brought against Rich and Green under current legal theories. In addition, money laundering statutes were not in place in 1983, and Rich could have been charged under these statutes if he were charged today. Finally, to look at the evolution of the law over the seventeen years that Marc Rich was a fugitive from justice, and argue that those changes merit a pardon for Rich is to reward Rich for his flight from the country. Indeed, sophisticated practitioners of money laundering — which is one of the things that Rich and Green were doing — would be in a far worse position if indicted today.

- “It was my understanding that Deputy Attorney General Eric Holder’s position on the pardon application was ‘neutral, leaning for.’”<sup>865</sup>

As explained throughout this report, Holder’s position on the pardon is more of an indictment of Holder’s judgment and reasoning than it is a justification for the pardon. Holder served the Justice Department and President poorly by failing to gather any facts about the Rich case before reaching his decision about the pardon. He also created the indelible impression that he did not have a pure motive in supporting Rich’s request while he was soliciting Jack Quinn’s support for appointment as Attorney General. This point is also an indictment of Jack Quinn, who worked very hard to keep the Rich pardon matter away from anyone who would be able to refute his spurious arguments.

- “[T]he case for the pardons was reviewed and advocated not only by my former White House counsel Jack Quinn but also by three distinguished Republican attorneys: Leonard Garment, a former Nixon White House official; William Bradford Reynolds, a former high-ranking official in the Reagan Justice Department; and Lewis Libby, now Vice President Cheney’s chief of staff.”<sup>866</sup>

This was President Clinton’s most misleading assertion. When President Clinton initially drafted this statement, it said that “the *applications* were viewed and advocated” not only by my former White House counsel Jack Quinn but also by three distinguished

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<sup>863</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 91 (Feb. 8, 2001) (testimony of Morris “Sandy” Weinberg, Jr., former assistant U.S. attorney for the S.D.N.Y., Department of Justice).

<sup>864</sup> William Jefferson Clinton, *My Reasons for the Pardons*, N.Y. TIMES, Feb. 18, 2001, at sec. 4, p. 13 (Exhibit 178).

<sup>865</sup> *Id.*

<sup>866</sup> *Id.*

Republicans[.]”<sup>867</sup> After some initial copies of the newspaper were printed, the former President’s spokesmen called *The New York Times* and asked that the word “applications” be replaced with “the case for the pardons.”<sup>868</sup> The pardon applications were never reviewed by Garment, Reynolds, or Libby, so the initial form of the statement was blatantly untrue.<sup>869</sup> However, even the improved statement was misleading. Garment, Reynolds and Libby had worked with Rich in the 1980s and early 1990s to try to reach a resolution of the charges against Rich in New York. The arguments made by Garment, Reynolds and Libby focused on the claim that the SDNY was criminalizing what should have been a civil tax case. They did not make, compile, or in any other way lay the groundwork for, or make a case for a Presidential pardon. When former President Clinton stated that they “reviewed and advocated” “the case for the pardons,” he suggested that they were somehow involved in arguing that Rich and Green should receive pardons. This was completely untrue.

- “[F]inally, and importantly, many present and former high-ranking Israeli officials of both major political parties and leaders of Jewish communities in America and Europe urged the pardon of Mr. Rich because of his contributions and services to Israeli charitable causes, to the Mossad’s efforts to rescue and evacuate Jews from hostile countries, and to the peace process through sponsorship of education and health programs in Gaza and the West Bank.”<sup>870</sup>

This argument would have been more sound if President Clinton had been President of Israel, rather than President of the United States. Indeed, President Clinton received more pressure from the Israeli government, Israelis, and Israeli sympathizers for a pardon for Jonathan Pollard than for Marc Rich and Pincus Green. Presumably, President Clinton was representing U.S. interests when he declined to pardon Pollard. While it would certainly not have been inappropriate to take many concerns into consideration, one would have expected President Clinton to continue to put U.S. interests above all others when considering the Rich and Green pardons.

There were a number of other problems with President Clinton’s reliance on statements of support from Israeli and Jewish officials. First, as discussed throughout this report, it appears that Marc Rich carefully cultivated support by making large financial contributions to political candidates and charitable groups, in some cases making his financial support contingent on their support for his pardon. In other cases, individuals voicing support for Rich were misled, and had no idea that their support would be used to obtain a pardon. Finally, as explained previously, it appears that the President has grossly exaggerated the extent to which Prime Minister Barak pressed him to issue the Rich pardon. President Clinton even misinformed his staff on January 19 that Prime Minister Barak had raised the Marc Rich issue, when in reality, it was President Clinton who raised the Rich pardon with Barak.

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<sup>867</sup> *Editors’ Note*, N.Y. TIMES, Feb. 19, 2001, at A15.

<sup>868</sup> *Id.*

<sup>869</sup> *Id.*

<sup>870</sup> William Jefferson Clinton, *My Reasons for the Pardons*, N.Y. TIMES, Feb. 18, 2001, at sec. 4, p. 13 (Exhibit 178).

Given the fact that every reason that the President offered for the Rich pardon was either misleading or inaccurate, the President's column added to the public furor over the pardons. Given the President's inability to provide any factually accurate or convincing justification for the Rich pardon, the public, and the Committee, are left wondering what the President's true motivations were.<sup>871</sup>

## **V. FAILURE OF KEY PARTIES TO COOPERATE IN THE MARC RICH AND PINCUS GREEN INVESTIGATION**

The Committee's investigation of the pardons of Marc Rich and Pincus Green was hampered by a number of Fifth Amendment claims and other refusals to cooperate with the Committee.

### **A. Marc Rich**

On February 15, 2001, Chairman Burton directed a letter to Marc Rich, asking him to testify before the Committee and waive attorney-client privilege with respect to documents relating to his efforts to obtain a pardon. On February 27, 2001, Laurence Urgenson, counsel for Mr. Rich, informed the Committee that because of the various criminal investigations into Mr. Rich's activities, Rich would not waive his attorney-client privilege, or appear before the Committee.<sup>872</sup>

### **B. Pincus Green**

On August 27, 2001, Chairman Burton sent a letter to Pincus Green, requesting that he participate in an interview with Committee staff.<sup>873</sup> Green never responded to this request. Given that Green apparently still lives outside of the United States, the Committee has not been able to serve him with a subpoena requiring the production of documents or testimony.

### **C. Jack Quinn**

Jack Quinn cooperated with the initial phase of the Committee's investigation, testifying at both the February 8, 2001, and March 1, 2001, hearings. Quinn also produced a number of documents to the Committee regarding his work for Marc Rich and Pincus Green. However,

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<sup>871</sup> In a televised interview, Roger Clinton made the following statement about the Marc Rich pardon:

Well, it was surprising, I can't — but I'm not saying it was wrong. I have talked to my brother about it, not in detail, but he has explained to me the reasons, the nonpersonal reasons — because I don't need to know the personal ones — but he has explained to me how he was right in doing it, and he thought that he was right, specially based on all the people that had written him about it.

*Larry King Live* (CNN television broadcast, June 21, 2001). Roger Clinton's reference to the "personal reasons" for President Clinton's action is noteworthy. While Roger Clinton has limited credibility, as the President's brother, he would have reason to know whether President Clinton had hidden motives for issuing the Marc Rich and Pincus Green pardons. However, it is unclear, what, if any, "personal reasons" the President had for issuing the pardons.

<sup>872</sup> Letter from Laurence A. Urgenson, Counsel for Marc Rich, Kirkland & Ellis, to James C. Wilson, Chief Counsel, Comm. on Govt. Reform (Feb. 27, 2001) (within Appendix I).

<sup>873</sup> Letter from the Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to Pincus Green (Aug. 27, 2001) (within Appendix I).

Quinn also withheld hundreds of pages from the Committee, claiming that they were covered by the attorney-client privilege. Quinn and three other law firms which had represented Marc Rich also made similar arguments to try to withhold the documents from the grand jury investigating the Rich and Green pardons. In December 2001, Federal District Court Judge Denny Chin overruled the claims of privilege by Quinn and the other lawyers, and directed them to produce the subpoenaed records to the grand jury. On December 17, 2001, Chairman Burton requested that Quinn and three other law firms representing Rich to produce to the Committee any documents they produced to the grand jury in response to Judge Chin's ruling.

On February 7, 2002, Quinn produced hundreds of pages of documents to the Committee which he had withheld for over a year. The documents were highly significant, and raised serious questions about Quinn's work on the Rich case, including whether Quinn was going to receive money from Rich, contrary to assurances given by Quinn at the Committee's February 8, 2001, hearing. On February 19, 2002, Chairman Burton asked Quinn to participate in a voluntary interview with Committee staff regarding the documents he had turned over. On March 5, 2002, Quinn's counsel Victoria Toensing informed Committee staff that Quinn would not participate in an interview with Committee staff. It is disturbing that Quinn withheld documents from the Committee for over a year, and then refused to answer questions about those documents when they were finally turned over to the Committee. Quinn's refusal to answer questions about these documents creates an impression that Quinn is still attempting to conceal relevant information from the Committee about his work on the Marc Rich case. In an attempt to obtain further information from Quinn, the Committee issued a document subpoena to him on March 6, 2002.

#### **D. Denise Rich**

On February 5, 2001, Chairman Burton submitted a list of written questions to Denise Rich regarding her efforts to win a pardon for her ex-husband.<sup>874</sup> Chairman Burton sent this letter in an attempt to obtain information from Mrs. Rich without calling her to testify at a public hearing. On February 7, 2001, Committee staff met with Carol Elder Bruce, counsel for Denise Rich. Bruce informed Committee staff that Rich would be invoking her Fifth Amendment rights rather than answer the questions posed to her by the Chairman. Bruce also informed the Committee staff that Rich was "pry to a number of private conversations that might be of interest" to the Committee.<sup>875</sup> She further informed the Committee that Rich had given a large amount of money with respect to the Clintons, including an "enormous sum" of money to the Clinton Library.<sup>876</sup> However, Bruce denied that Rich had any intent to bribe President Clinton. Later that day, Bruce sent a letter to Chairman Burton in which she confirmed that "Ms. Rich is asserting her privilege under the Fifth Amendment of the United States Constitution not to be a witness against herself and, accordingly, will not be answering any questions of the Chairman or the Committee."<sup>877</sup>

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<sup>874</sup> Letter from the Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to Carol Elder Bruce, Counsel for Denise Rich, Tighe Patton Armstrong & Teasdale (Feb. 5, 2001) (within Appendix I).

<sup>875</sup> Notes of meeting with Carol Elder Bruce, Counsel for Denise Rich, Tighe Patton Armstrong & Teasdale (Feb. 7, 2001).

<sup>876</sup> *Id.*

<sup>877</sup> Letter from Carol Elder Bruce, Counsel for Denise Rich, Tighe Patton Armstrong & Teasdale, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Feb. 7, 2001) (within Appendix I).

## **E. Beth Dozoretz**

After the Committee learned of Beth Dozoretz's involvement in the Rich pardon matter at its February 8, 2001, hearing, Committee staff attempted to interview Dozoretz. She refused to answer calls from Committee staff, and accordingly, on February 16, 2001, Chairman Burton sent a letter to Dozoretz requesting her to participate in an interview.<sup>878</sup> On February 20, 2001, Tom Green, counsel for Dozoretz, called Committee staff and stated that Dozoretz declined to be interviewed. Accordingly, on February 23, 2001, Chairman Burton issued a subpoena to Dozoretz requiring her to testify before a hearing of the Committee on March 1, 2001. On February 26, 2001, Mr. Green wrote to the Chairman to inform him that Dozoretz "has elected to invoke her constitutional privilege not to testify."<sup>879</sup> When Chairman Burton informed Green that he intended to call Dozoretz to invoke her Fifth Amendment rights publicly,<sup>880</sup> Green sent a letter requesting that Dozoretz be excused from her appearance.<sup>881</sup> However, the Chairman required Dozoretz to testify for two main reasons: first, a letter from counsel stating that a client will invoke the Fifth Amendment if called is not a satisfactory invocation of the Fifth Amendment; and second, the Committee could not be certain that Dozoretz would actually take the Fifth if called to testify, and accordingly had a responsibility to call her to determine whether or not she would actually invoke her Fifth Amendment rights. On March 1, 2001, Dozoretz appeared before the Committee and invoked her Fifth Amendment rights rather than testify about her role in the Rich and Green pardons.

## **F. Avner Azulay**

Avner Azulay was a key participant in the effort of Marc Rich and Pincus Green to obtain a pardon. Since Azulay resides outside of the United States, the Committee was not able to compel Azulay's testimony. However, on March 8, 2001, Chairman Burton sent a letter to Azulay requesting that he participate in an interview with Committee staff.<sup>882</sup> On March 15, 2001, Azulay responded by referring the Committee to his lawyer in New York, Robert Morvillo.<sup>883</sup> Committee staff then had a number of communications with Morvillo attempting to arrange an interview of Azulay. The Committee was initially informed that Azulay was undergoing medical treatment, and was unable to participate in an interview. However, over the course of the negotiations with Morvillo, it became clear that Azulay had no intention of cooperating with the committee. In a final discussion on February 28, 2002, Morvillo confirmed that Azulay would not participate in an interview with Committee staff. Given his key role in

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<sup>878</sup> Letter from the Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to Beth Dozoretz, former Finance Chair, Democratic National Committee (Feb. 16, 2001) (within Appendix I).

<sup>879</sup> Letter from Thomas C. Green, Counsel for Beth Dozoretz, Sidley & Austin, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Feb. 26, 2001) (within Appendix I).

<sup>880</sup> Letter from the Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to Thomas C. Green, Counsel for Beth Dozoretz, Sidley & Austin (Feb. 26, 2001) (within Appendix I).

<sup>881</sup> Letter from Thomas C. Green, Counsel for Beth Dozoretz, Sidley & Austin, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Feb. 27, 2001) (within Appendix I).

<sup>882</sup> Letter from the Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to Avner Azulay, Director, Rich Foundation (Mar. 8, 2001) (Exhibit 118).

<sup>883</sup> Letter from Avner Azulay, Director, Rich Foundation, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Mar. 15, 2001) (Exhibit 119).



enlisting support for the Rich and Green pardons among Israeli leaders, Azulay's refusal to cooperate with the Committee's investigation has had a significant negative impact.

#### **G. Peter Kadzik**

The Committee only learned of Peter Kadzik's role in lobbying for the Rich and Green pardons after receiving records from his law firm, Dickstein, Shapiro, Morin & Oshinsky, which reflected Kadzik's work on the matter. On Friday, February 23, 2001, Committee staff left a message with Kadzik's attorney informing him that Kadzik would be called to testify at the Committee's March 1, 2001, hearing. On Monday, February 26, Chairman Burton sent a letter to Kadzik formally notifying him that he would be called to testify.<sup>884</sup> At 7:40 p.m. on February 27, 2001, only 36 hours before the March 1 hearing, and without so much as a telephone call from Kadzik or his attorneys to Committee staff, Kadzik sent a response to the Chairman, declining to testify because he was to be in California for a meeting.<sup>885</sup> Upon receiving this information, Chairman Burton issued a subpoena for Kadzik's attendance at the hearing.<sup>886</sup> Despite the fact that Committee staff informed Kadzik's attorneys that the Chairman would subpoena Kadzik to attend the hearing, Kadzik boarded a plane for California on the morning of February 28, 2001. Accordingly, the Committee provided the subpoena to the U.S. Marshals Service for service upon Kadzik. When Kadzik exited his plane in San Francisco, he was served by a U.S. Marshal. He then boarded the next plane for Washington, and arrived in time to testify at the Committee's March 1, 2001, hearing. While the Committee was able to serve Kadzik and receive testimony from him, his attempts to avoid compulsory process were unseemly. Kadzik declined to testify voluntarily. Then, when he was informed that the Committee would issue a subpoena to compel his attendance at the hearing, he left Washington, mistakenly assuming that the Committee would not be able to serve him.

#### **H. Terry McAuliffe**

In a letter dated February 16, 2001, Chairman Burton requested Terry McAuliffe to participate in an interview with Committee staff regarding the Rich and Green pardons, specifically regarding Denise Rich's contributions to the Clinton Library.<sup>887</sup> Shortly thereafter, Richard Ben-Veniste, McAuliffe's attorney, contacted Committee staff to state that he wanted to wait until the Committee reached an accommodation with the Clinton Library regarding access to the Library's information, before he decided whether to make McAuliffe available. On March 22, 2001, Chairman Burton informed Ben-Veniste that after obtaining information from the Clinton Library, he still wanted McAuliffe to participate in an interview with Committee staff.<sup>888</sup> On March 23, 2001, Ben-Veniste responded to state that he wanted more information regarding

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<sup>884</sup> Letter from the Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to Peter Kadzik, Partner, Dickstein Shapiro Morin & Oshinsky (Feb. 26, 2001) (within Appendix I).

<sup>885</sup> Letter from Peter Kadzik, Partner, Dickstein Shapiro Morin & Oshinsky, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Feb. 27, 2001) (within Appendix I).

<sup>886</sup> Subpoena from House Comm. on Govt. Reform to Peter Kadzik, Partner, Dickstein Shapiro Morin & Oshinsky (Feb. 27, 2001) (within Appendix II).

<sup>887</sup> Letter from the Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to Richard Ben-Veniste, Counsel for Terry McAuliffe, Weil Gotshal & Manges (Feb. 16, 2001) (within Appendix I).

<sup>888</sup> Letter from the Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to Richard Ben-Veniste, Counsel for Terry McAuliffe, Weil Gotshal & Manges (Mar. 22, 2001) (within Appendix I).

what the Committee sought from McAuliffe.<sup>889</sup> The Committee's Chief Counsel provided this information in a letter dated March 30, 2001.<sup>890</sup> Nevertheless, on April 11, 2001, Ben-Veniste sent a reply stating that "it does not appear that a personal interview with the staff is warranted at this time. Mr. McAuliffe wishes you to know that his obligations as Chairman of the Democratic National Committee to help elect a Democratic majority to the House and Senate are fully occupying his time at the present."<sup>891</sup>

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<sup>889</sup> Letter from Richard Ben-Veniste, Counsel for Terry McAuliffe, Weil Gotshal & Manges, to James C. Wilson, Chief Counsel, Comm. on Govt. Reform (Mar. 23, 2001) (within Appendix I).

<sup>890</sup> Letter from James C. Wilson, Chief Counsel, Comm. on Govt. Reform, to Richard Ben-Veniste, Counsel for Terry McAuliffe, Weil Gotshal & Manges (Mar. 30, 2001) (within Appendix I).

<sup>891</sup> Letter from Richard Ben-Veniste, Counsel for Terry McAuliffe, Weil Gotshal & Manges, to James C. Wilson, Chief Counsel, Comm. on Govt. Reform (Apr. 11, 2001) (within Appendix I).